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99TH CONGRESS
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Rept. 99-____
Part I

# INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1986

May 15, 1985.--Ordered to be printed

Mr. Hamilton, from the Permanent Select Committee on Intelligence, submitted the following

REPORT
together with
Minority Views
[To accompany H.R. 2419]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 2419) to authorize appropriations for fiscal year 1986 for the intelligence and intelligence-related activities of the U.S. Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass with amendments.

## PURPOSE

The bill would:

(1) Authorize appropriations for fiscal year 1986 for (a) the intelligence and intelligence-related activities of the U.S. Government, (b) the Intelligence Community Staff and (c) the Central Intelligence Agency Retirement and Disability system;

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(2) Authorize the personnel ceilings on September 30, 1986 for the intelligence and intelligence-related activities of the U.S. Government;

(3) Permit the Director of Central Intelligence to authorize personnel ceilings in fiscal year 1986 for any intelligence elements up to 2 percent above the authorized levels;

(4) Prohibit the use of any funds available to any agency involved in intelligence activities for military or paramilitary operations in Nicaragua;

(5) Provide notice to Congress of certain expenditures and certain transfers of defense articles; and

(6) Require the Director of Central Intelligence to review and evaluate the vulnerability of confidential United States Government activities abroad.

## OVERALL PERSPECTIVE ON THE INTELLIGENCE BUDGET

### COMMITTEE INTENT

The committee once again has considered the question of public disclosure of various intelligence budget figures and has concluded disclosure is not in the public interest. By itself, a single intelligence budget total would probably not harm intelligence activities or capabilities. Such a number, however, would be meaningless in a vacuum. It is unclear what number would be used: The total National Foreign Intelligence Program; Tactical Intelligence and Related Activities; authorization; appropriation? In any case, the

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description which would be necessary to make the budget figure comprehensible would itself be highly sensitive. It is in this context that the committee fears that budget disclosure can be harmful and inconsistent with the primary purpose of secrecy in intelligence matters.

Intelligence activities and capabilities are inherently fragile. Unlike weapons systems, which can be countered only by the development of even more sophisticated systems developed over a long period, intelligence systems are subject to immediate compromise. Often they can be countered or frustrated rapidly simply on the basis of knowledge of their existence. Thus budget disclosure might well mean more to this country's adversaries than to any of its citizens. Further, this information could then be used to frustrate United States intelligence missions.

The committee recognizes that the best argument in favor of budget disclosure is public accountability. Because it feels strongly, however, that the public does not wish congressional oversight to frustrate legitimate intelligence activities, but rather to guarantee their proper course, the committee continues to believe the disclosure of any intelligence budget information is not in the public interest. The committee has made, and will continue to make, a consistent effort to conduct its oversight and legislative proceedings in public in order to provide the public with the assurance that intelligence activities are receiving appropriate congressional scrutiny.

The classified schedule of authorizations and the detailed explanation found in the annex to this public report contain a thorough discussion of all budget issues considered by the committee and are available to all Members of the House. The schedule of authorizations lists the amounts of dollars and

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personnel ceilings for all the intelligence and intelligence-related programs authorized by the bill. These are directly incorporated into, and are integral to, the bill itself. It is the intent of the committee that all intelligence programs discussed in the annex to this report be conducted in accordance with the guidance and limitations contained therein.

## SCOPE OF COMMITTEE REVIEW

The National Foreign Intelligence Program budget consists of resources of the following departments, agencies, and other elements of the Government: (1) the Central Intelligence Agency; (2) the Department of Defense; (3) the Defense Intelligence Agency; (4) the National Security Agency; (5) the Departments of the Army, Navy and Air Force; (6) the Department of State; (7) the Department of Treasury; (8) the Department of Energy; (9) the Federal Bureau of Investigation; (10) the Drug Enforcement Administration; and (11) the Intelligence Community Staff of the Director of Central Intelligence. The Department of Defense Tactical Intelligence and Related Activities [TIARA] are a diverse array of reconnaissance and target acquisition programs which are a functional part of the basic force structure and provide direct information support to military operations. TIARA, as defined by the Joint Chiefs of Staff and the Secretary of Defense, include those activities outside the Defense Intelligence program which respond to operational command tasking for time sensitive information as well as to national command, control, and intelligence requirements. These military intelligence activities also fall within the jurisdiction of the Committee on Armed Services. Pursuant to their shared jurisdiction, both committees have agreed to the amount authorized for TIARA programs.

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Beginning in February 1985, the Program and Budget Authorization Subcommittee conducted a series of hearings which ran through March. The budget hearings involved a total of more than 56 hours of testimony with witnesses from each major intelligence and intelligence-related program. These budget hearings resulted in written responses to many additional questions.

## OVERALL COMMITTEE FINDINGS AND RECOMMENDATIONS

The administration requested real growth for fiscal year 1986 over the amount Congress appropriated for intelligence in fiscal year 1985, a year in which there was substantial growth in intelligence spending. In part the increase resulted from inflation, in part from the need to procure new types of equipment to provide better intelligence support to combat units, in part to improve or upgrade existing intelligence systems, in part to develop new systems and in part to augment personnel levels. The committee is convinced that U.S. intelligence agencies are performing a vital service for the national security. As in the past years, the committee also finds certain shortcomings in the management and conduct of certain of the nation's intelligence activities. Recommendations for making improvements in these areas are contained in the classified annex to this report and the committee will be pursuing these and other related issues further during the coming months.

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The committee was not convinced that the total amount requested for fiscal year 1986 was fully warranted. The committee supports a lower level of effort than that requested by the President in his budget. Therefore, the committee has recommended deferral of certain proposals, the deletion of others, while a few items were increased. The overall impact of the recommendation is a significant reduction in the request. The reductions recommended by the committee reflect percentage reductions larger than those adopted by the Committee on Armed Services to the overall FY 86 defense budget.

Further, these reductions are reflected in the total reductions and resultant growth rate for the overall defense budget recommended by H.R. 1872, the FY 1986 Defense Authorization Act. In the committee's view the recommended authorization for intelligence and intelligence-related activities in this bill represents a reasonable balance between needed capabilities and prudent cost. The committee has stated repeatedly in the past that increases of the magnitude requested over the past several years cannot be sustained. These requests represent a program to increase capabilities and respond to new requirements, but they also represent funding commitments that already promise to become difficult to meet in the years to come.

It should be understood that the intelligence budget is largely a subset of the defense budget. Almost all of the intelligence budget is contained within the defense budget both for reasons of security and because the great majority of intelligence activities are conducted by elements of the Department of Defense. Thus, increases and decreases for intelligence are largely changes to the defense budget and are not direct changes to the federal budget as a whole. The Defense Authorization Bill establishes the

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overall budget limit for defense and reflects all changes to intelligence programs contained in this bill except for those few programs which are not in the defense budget. As a result of this close correlation between intelligence and defense, the committee takes the view that reductions to intelligence should parallel those made to the defense budget as a whole. The committee's recommended reductions are somewhat greater than the reduction currently proposed for the defense budget overall. This reduction still permits limited real growth in the intellience budget because it contained more growth than the average growth for defense overall. Budget emphasis on intelligence was a deliberate decision by the President, Secretary of Defense, and Director of Central Intelligence. The committee accepts the priority that has been placed on intelligence, but has recommended reductions which are commensurate with those applied to defense as a whole and which are responsible.

The committee recognizes that the budget submitted by the Director of Central Intelligence grew considerably less this year compared to recent previous years. Additional demands for intelligence will create pressure for greater growth. The committee believes that very little real growth can be expected for the next several years.

## Amendments

On page 4, line 6, strike everything through line 13 and insert in lieu thereof the following:

> "SECTION 105. During fiscal year 1986, no funds available to the Central Intelligence Agency, Department of Defense, or any other agency or entity of the United States involved in intelligence

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activities may be obligated or expended, directly or indirectly, for material assistance to the Nicaraguan democratic resistance including arms, ammunition, or other equipment or material which could be used to inflict serious bodily harm or death, or which would have the effect of providing arms, ammunition or other weapons of war for military or paramilitary operations in Nicaragua by any group, organization, movement or individual."

On page 6, lines 24-25, strike ", subject to the provisions of section 501,".

On page 7, line 2, strike "Fund" and insert in lieu thereof "Funds".

## SECTION-BY-SECTION ANALYSIS

### TITLE I--INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES

Section 101 lists the departments and agencies for whose intelligence and intelligence-related activities the bill authorizes appropriations for fiscal year 1986.

Section 102 makes clear that, with the exception of sections 103 and 105, details of the committee's recommendations with respect to the amounts authorized to be appropriated for intelligence and intelligence-related activities and personnel ceilings covered under this title for fiscal year 1986 are contained in a classified schedule of authorizations to the bill and the classified annex to this report. The schedule of authorizations is incorporated into H.R. 2419 by this section.

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Section 103 authorizes appropriations of $15,200,000 for the counterterrorism program of the Federal Bureau of Investigation.

Section 104 permits the Director of Central Intelligence to authorize the personnel strength of any intelligence element to exceed the fiscal year 1986 authorized personnel levels by no more than 2 percent if he determines that doing so is necessary for the performance of important intelligence functions. The Director must notify the two intelligence committees promptly of any exercise of authority under the section.

It is to be emphasized that the authority conveyed by this section is not intended to permit the wholesale raising of personnel strength in each or any intelligence component. Rather, the section provides the Director of Central Intelligence with flexibility to adjust personnel end strength temporarily for contingencies and for overages caused by an imbalance between hiring of new employees and attrition of current employees for retirement, resignation, etc. The committee does not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed personnel levels set in the schedule of authorizations except for the satisfaction of clearly identified hiring needs which are consistent with the authorization of personnel strengths in this bill. In no case is this authority to be used to provide for positions denied by this bill.

As introduced, Section 105 would have prohibited any funds available to any agency involved in intelligence activities being used to support, directly or indirectly, military or paramilitary operations in Nicaragua. The section also had the effect of denying any funds requested for such a purpose in fiscal year 1986. It would extend the current statutory prohibition for support to the Nicaraguan "contras" through the end of FY 1986.

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An amendment was adopted by the committee to strike the original language of Section 105 so as to make clear that the prohibition that applies to supporting Nicaraguan insurgents or "contras" applies only to the provision of funds, goods, equipment, civilian or military supplies, or any other materiel, but does not include the provision of intelligence information or advice to the contras.

## TITLE II--INTELLIGENCE COMMUNITY STAFF (ICS)

Section 201 authorizes the appropriation of $21,900,000 for the Intelligence Community Staff [ICS], which provides the Director of Central Intelligence [DCI] with staff assistance to carry out his intelligence community responsibilities. The Staff supports the DCI in the execution of his responsibilities to develop, review, and approve the National Foreign Intelligence Program budget, to evaluate the performance of foreign intelligence activities, and to develop issues, goals, and other required guidance for the intelligence community.

Sections 202 and 203 provide certain administrative authorities for the Intelligence Community Staff. Section 202(a) authorizes 233 full-time personnel for the staff as of September 30, 1986. The Intelligence Community Staff is composed of a permanent cadre, detailed community personnel, and contract hirees.

The Intelligence Community Staff is now made up of personnel who are permanent employees of the Staff and others who are detailed for several years from various intelligence elements. The purpose of section 202(b) is to

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authorize this staff approach and to require that detailed employees represent all appropriate elements of the Government, including those engaged in intelligence-related activities.

Section 202(c) requires that personnel be detailed on a reimbursable basis except for temporary situations. The Staff's authorized size, in the opinion of the committee, is sufficient for the duties which the Staff performs. This provision is intended to insure that its ranks are not swelled by detailees, the personnel costs for whom are not reimbursed to their parent agency.

Section 203 provides the Director of Central Intelligence with authority to manage the activities and to pay the personnel of the Intelligence Community Staff because the Staff is not otherwise authorized by law. However, it is the committee's intent that in the case of detailed personnel, the DCI's authority to discharge personnel shall only extend to discharging detailed personnel from service at the Intelligence Community Staff and not from Federal employment or military service.

## TITLE III--CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 301 authorizes appropriations for the Central Intelligence Agency Retirement and Disability System (CIARDS) in the amount of $101,400,000 for fiscal year 1986. The Central Intelligence Agency Retirement Act of 1964 for Certain Employees (Public Law 88-643) authorized the establishment of CIARDS for a limited number of Agency employees and authorized the establishment and maintenance of a fund from which benefits would be paid to qualified beneficiaries.

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The requested CIARDS funds will finance:

(1) Interest on the unfunded liability;

(2) The cost of annuities attributable to credit allowed for military service;

(3) Normal cost benefits not met by employee and employer contributions;

(4) The increase in unfunded liability resulting from liberalized benefits and Federal pay raises.

The benefits structure of CIARDS is essentially the same as for the Civil Service Retirement System with only minor exceptions. These exceptions are: (a) annuities are based upon a straight 2 percent of high 3-year average salary for each year of service, not exceeding 35; (b) under stipulated conditions a participant may retire with the consent of the Director, or at his direction be retired at age 50 with 20 years service, or a participant with 25 years of service may be retired by the Director regardless of age; and (c) retirement is mandatory at age 65 for personnel receiving compensation at the rate of GS-18 or above, and at age 60 for personnel receiving compensation at a rate less than GS-18, except that the Director may, in the public interest, extend service up to 5 years.

Annuities to beneficiaries are provided exclusively from the CIARDS fund maintained through: (a) contributions, currently at the rate of 7 percent, deducted from basic salaries of participants designed by the Director; (b) matching Agency (employer) contributions from the appropriation from which salaries are paid, based on the actual rate of contributions received from participants; (c) transfers from the Civil Service Retirement and Disability

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Fund representing employee and matching employer contributions for service of Agency employees prior to the date of their participation in CIARDS, and contributions for service of integrated Agency employees included in CIARDS following termination of integrated status; (d) income on investments in U.S. Government securities; and (e) beginning in 1977, direct appropriations consistent with the provisions of Public Law 94-552.

## TITLE IV--PROVISIONS RELATING TO INTELLIGENCE AGENCIES

Section 401 adds a new Section 502(a) to the National Security Act of 1947 requiring notice to the Intelligence and Appropriations Committees of the House and Senate of expenditures for intelligence or intelligence-related activities in excess of authorized amounts and a new Section 502(b) requiring that transfers by an intelligence agency of items of military equipment or services worth more than $1,000,000 per item or service be reported to the intelligence committees under the provisions of Section 501 of the National Security Act of 1947 (the Intelligence Oversight Act).

Section 401(a) codifies a section which has long appeared in annual intelligence authorization acts. Since the fiscal year 1981 Intelligence Authorization Act, that provision has required that funds spent for intelligence activities must have been authorized in the amount for which they are to be spent. If expenditures exceeded the authorized level, the Director of Central Intelligence or the Secretary of Defense has been required to notify the appropriate committees of Congress in advance of the intent to

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exceed authorized levels. In addition, both the fiscal year 1984 and fiscal year 1985 Intelligence Authorization Acts have included requirements that, in the case of any reprogramming for an intelligence or intelligence-related activity or the use of transfer authority by the Director of Central Intelligence, that the new use of the funds in question be based on unforeseen requirements of higher priority and that in no event could funds be spent for intelligence programs which had been denied by Congress.

As redrafted in permanent form, Section 502(a) requires that funds may not be spent for intelligence or intelligence-related activities unless those funds have been specifically authorized. Specifically authorized is defined to mean that the activity and the amounts to be spent for that activity have been identified in a formal budget request to the Congress and that Congress has either authorized those funds to be appropriated and they have been appropriated, or, whether or not the funds have been requested, the Congress has specifically authorized a particular activity, and authorized and appropriated funds for that activity.

Section 502(a) also makes provision for the use of funds from the Reserve for Contingencies to the Central Intelligence Agency. These funds are authorized and appropriated for unforeseen contingencies that occasion the need for rapid response. Such funds provide to the President and the Director of Central Intelligence the flexibility to apply necessary sums to meet opportunities or address crises that can develop in either the intelligence collection or covert action arenas. The legislative history of previous annual authorization acts recognized that funds in the Reserve were authorized to be spent for such contingencies and therefore need not have been reported

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under the earlier reporting sections. However, the Congress has had, since 1976, an understanding with the Director of Central Intelligence that notice of all releases from the Reserve for Contigencies would be made to the Intelligence and Appropriations Committees at the time that each release was sought, i.e., prior to any funds actually having been expended.

Section 502(a)(1)(B) recognizes that there could be circumstances under which limited notice could be provided of significant anticipated intelligence activities, particularly covert action operations, under the Intelligence Oversight Act. To ensure that reporting of the same event, where funding is sought from the Reserve, can be treated in the same way under new Section 502(a) and Section 501, (the Intelligence Oversight Act), Section 502(a)(1)(B) makes clear that the reporting requirement with regard to the Reserve must be "consistent with the provisions of Section 501 of this Act."*

Section 502(a)(1)(C) repeats the language of earlier versions of this section requiring that if funds are shifted from one program to another, they must be to satisfy a higher priority activity, the need for the funds must be based on unforeseen requirements, and that appropriate notice must be given of the transfer of such funds. These requirements have been in place since fiscal year 1981 and reflect long-standing reprogramming or transfer guidelines agreed to by the Congress and the intelligence and defense communities.

* The committee made a technical change to Section 501(a)(1)(B) to strike the phrase ", subject to the provisions of Section 501," which had been included in the bill as introduced because of a typographical error.

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Finally, Section 502(a)(2) states that no funds may be made available for any intelligence activity for which funds were denied by the Congress. This prohibition applies to the use of all funds available to intelligence agencies, whether programmed or contingency, and is to be construed strictly. At the same time, it should be recognized that a program for which funding was denied by Congress, but which has been restructured in a major way so as to effectively constitute a new program, is not barred from being funded. Such programs, however different they may be, if they address the same subject matter, are matters of congressional interest and, by tradition and agreed upon procedures, can only be funded by reprogramming. The use of contingency funds such as the Reserve for Contingencies of the CIA would be an inappropriate application of funds in such a case. That is because the Reserve was created to permit flexible response to unforeseen circumstances that could not have been anticipated. Restructuring programs denied by Congress does not constitute responding to unforeseen circumstances. It is the intent of Section 502(a)(2) to continue to prevent the funding for programs which have been considered by Congress and for which funding has been denied but not to prevent a restructuring along lines either directed by Congress or acceptable to it.

Section 502(b) specifies that the transfer of a defense article or service which exceeds $1,000,000 in value is to be treated as a significant anticipated intelligence activity, as that term is employed in the Intelligence Oversight Act (Section 501 of the National Security Act of 1947).

The legislative history of the Intelligence Oversight Act makes clear that all covert action findings made by the President pursuant to the Hughes-Ryan

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Amendment (22 U.S.C. 2422) are significant anticipated intelligence activities and must be reported to the intelligence committees prior to their implementation. What is less clear, and where the committee has in the past experienced some difficulty in receiving satisfactory reporting under the statute, have been the identification of significant anticipated intelligence activities undertaken pursuant to an existing finding, but not reported or perhaps even contemplated at the time the initial finding was made. An example of this would be the mining of the Nicaraguan harbors, which was not brought to the attention of the committee prior to implementation.

Another important area of activity which takes place pursuant to an existing covert action finding involves the transfer to another country or faction, etc., of military equipment. If such transfers are made covertly or clandestinely, they are in effect covert action. As such, they must be reported under the Intelligence Oversight Act. If, pursuant to an already approved covert action finding, a transfer rises to the level of significance, as that concept is expressed by the legislative history of the Act, prior notice should also be given. Some transfers will be in this category. There will be other transfers of such equipment that will be de minimis or inconsequential and which clearly do not rise to a level of great significance.

Although an arms transfer may be below the $1,000,000 threshold triggering notice under Section 502(b), it must be recognized that it may require notice under Section 501 because it represents a material change in an authorized covert action, is a matter of Congressional interest, or there is some other reason lending significance to the transfer.

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Generally, however, there are several reasons why military equipment transfers, per se, are important. The provision of military equipment or services, especially expensive, sophisticated, or very lethal equipment, is a key aspect for the U.S. foreign policy. Security assistance can enhance the stability of U.S. allies, discourage aggression by our adversaries, encourage democracy, etc. It must be carefully devised, reviewed, and implemented lest it work against U.S. interests.

At the same time, covert transfers of military equipment or services bypass the established statutory framework for the consideration and approval of security assistance programs. Being secret, these transfers avoid public commentary, congressional review and debate. Therefore, they occur without many of the usual checks and balances built into the Foreign Assistance Act and the Arms Export Control Act. Because these statutes were intended to lay out the review and approval process for arms transfers, the general public and most of the Congress assume that what they do not have notice of does not occur.

The use of secret arms transfers also can encourage the unwise use of that capability. Programs that would never have been approved by the Congress through overt security assistance channels may be attempted. If they are made covertly, they avoid public debate. Under such circumstances, a transfer could represent the misapplication of covert transfer authority that might discredit the foreign policy structure and make justifiable transfers less likely to be accepted.

Finally, many covert transfers of military equipment do not stay covert long. U.S. military equipment, in particular, is unique, especially large or

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expensive pieces of hardware. The discrepancies between current inventory and those acquired by overt grant or sale will eventually be noticed and, when they are, the administration then in power and the intelligence agencies involved will have to produce explanations to those who will demand to know why the transfers were made secretly.

In the past, prior notice of some transfers of clearly significant kinds of military equipment was not provided to the intelligence committees until after they had occurred. Yet Congress, in establishing the Foreign Assistance Act/Arms Export Control Act statutory review process for arms transfers and congressional oversight over all intelligence activities, has deemed that arms transfers are significant. Congress has also structured its congressional intelligence oversight committees to maintain the appropriate protection of sources and methods and, at the same time, to keep their respective Houses and other committees informed of significant intelligence activities. Accordingly, the committee has adopted Section 502(b) to require prior notification of all military equipment transfers whose value exceeds $1,000,000 per unit.

Section 502(b) will not require prior notification of all covert military transfers, only those which involve expensive, technologically important items of military equipment. Of course, transfers of items in value less than $1,000,000 per unit may, for reasons other than the value of the item transferred, rise to the level of significance and still require prior notice to the intelligence committees. Thus, the Committee is creating a rule that a transfer of an item of a value in excess of $1,000,000 is per se "significant"; and leaving transfers of an item of a value less than

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$1,000,000 to be determined as the Intelligence Oversight Act and its legislative history dictate. One important means of making such determinations is through the communication by the intelligence committees to the intelligence agencies of their concerns and interests through reports, procedures and budgetary documents.

The judgment of the Committee is that transfers of expensive items of military equipment would no doubt raise the greatest concern for Congress and the public. It is in this area that the determination that such transfers are indeed significant anticipated intelligence activities is by far the clearest case and it is in this area that it is most important for the Congress to be able to comment prior to such transfers. It should be clear, as the explicit reference to Section 501 shows, that the congressional significance of oversight committees would not approve or disapprove such transfers. They would receive notice of them that, experience shows, might not otherwise occur under the executive branch's prior interpretation of the term "significant anticipated intelligence activity," as used in Section 501.

While Section 502(b) does not specify how soon before transfer of an item of defense equipment or service takes place that prior notice must be provided, the committee is in agreement that ordinarily at least 15 days' notice should be provided. Further, wherever possible, notice should be provided prior to the initiation of efforts to effect a transfer, i.e., immediately after approval by the appropriate authority. The committee considered making this a statutory requirement but decided that its experience was that at least 15 days' notice is normally provided and can be considered to be reasonable and customary. If extraordinary circumstances arise, the committee understands that advance notice of less than 15 days may be provided.

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Section 502(b) covers transfers. Transfer in this context means the transfer of possession and therefore includes loans, bailments or other sorts of nominally temporary transfers and, in the case of a defense service, the actual provision of such a service.

The transfers covered by Section 502(b) are transfers of defense articles or defense services, which mean items on the Munitions List established pursuant to the Arms Export Control Act.

The value of a defense article or a defense service must exceed $1,000,000 to come under the provisions of Section 502(b). Value is determined, in the case of a defense article, by the original acquisition costs plus any improvements or modifications made by the Government or for the Government (including the cost of the transportation associated with a particular transfer) or the replacement cost of that article (including transportation) whichever is greater.

Replacement cost for a defense article still in production would be the current unit cost. For a defense article no longer in production, replacement cost would be the cost of the most comparable defense article of the same type or category, such as the item of equipment which may have taken the place in current military inventories of the item no longer in production. Where there is no comparable defense article, replacement cost may be less susceptible to accurate determination. In such circumstances, the best way to calculate replacement cost would be to estimate a reasonable, current cost of production if the item in question were in production. Whatever method is used should err in favor of higher value and subsequent notification to the Committee.

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In the case of a defense service, replacement value is the full cost to the Government of providing the services (including the transportation and other expenses associated with any U.S. personnel providing the service).

Section 502(b) is intended to encompass clandestine or covert transfers. It explicitly does not include transfers pursuant to the Foreign Assistance Act or Arms Export Control Act, i.e. foreign aid. It does not include disposition of excess federal property under the Federal Property and Administrative Services Act of 1949 nor does it include Economy Act or other transfers between government departments so long as the items or services transferred are not in turn provided to a recipient outside the U.S. Government.

Section 502(b) covers transfers to any type of recipient, including, but not limited to, foreign governments, foreign factions or insurgent groups, or individuals. Notice of transfers covered by Section 502(b) is provided to the intelligence committees of the House and Senate. These committees have as one of their responsibilities to their respective Houses the duty to inform other committees or the House itself of matters which, in their view, are of such significance that they deserve the attention of such other committees or House.

Finally, Section 502(b)(3) makes clear that any transfer of any defense article or any defense service which has been in conjunction with an intelligence or intelligence-related activity for which funds were denied by Congress may not take place. This stipulation, like that referred to in Section 502(a) regarding denial of funding, should be strictly construed and applied. Programs involving transfers of military equipment which are major restructurings of denied programs should be treated in the same way as restructured programs under Section 502(a)(2).

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Section 402 of the bill requires the Director of Central Intelligence to provide a report to the House and Senate Intelligence Committees 120 days after enactment of the bill. The subject matter of the report is to be the vulnerability of confidential U.S. Government activities abroad, particularly at U.S. Embassies and Consulates, to efforts by foreign powers (and, in particular, their foreign intelligence and security services) to detect, compromise or otherwise frustrate such activities.

The committee has become very concerned in recent months about the coordination and effectiveness of U.S. security and counterintelligence efforts in U.S. missions abroad. For this reason, it is directing that a report be submitted so that the committee will be in a position to assess on a comprehensive basis the threat posed by foreign intelligence and security services to U.S. missions overseas and consider what steps may be taken, both within the competence of the Director of Central Intelligence and within the responsibility of other government officials and agencies.

The committee seeks to assure itself that, if counterintelligence and security efforts are not fully integrated and coordinated in these most critical United States Government installations, this fact can be known and measures to resolve this situation identified and quickly implemented. The committee is of the view that lack of coordination and cooperation between U.S. Government agencies represents a self-inflicted wound whose hemorrhage must be stanched and which then must be surgically repaired. The committee stands willing to consider all appropriate measures to ensure that any vulnerabilities which stem from the lack of U.S. resources or inadequate coordination are ended forthwith.

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## TITLE V--GENERAL PROVISIONS

Section 501 provides that the authorization of appropriations by H.R. 2419 shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States. H.R. 2419, with the exception of title IV, authorizes appropriations for fiscal year 1986.

Section 502 provides authority for adjustments to Federal employee compensation and benefit increases during fiscal year 1986 which are authorized by current or subsequently enacted law. It obviates the necessity for a separate authorization for such increases during the fiscal year.

This section also includes contingent authorization for subsequent appropriations for unbudgeted amounts for salary, pay, retirement, and other employee benefits in the event Congress acts to restore the Administration's proposed five percent cut in civilian pay as reflected in the budget request. The committee believes such a reduction would be ill advised and will support such a restoration. However, it is the committee's view that funds authorized for Operations and Maintenance accounts will be sufficient to provide for any increase in civilian pay above budgeted amounts. The committee expects that intelligence elements will draw upon such accounts in providing any necessary increases for civilian pay.

## COMMITTEE POSITION

On May 14, 1985, the Permanent Select Committee on Intelligence, a quorum being present, approved the bill with amendments and ordered it favorably reported by voice vote.

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## OVERSIGHT FINDINGS

With respect to clause 2(l)(3)(A) of Rule XI of the House of Representatives, the committee has held extensive hearings regarding the nature and conduct of the intelligence and intelligence-related activities of the U.S. Government in considering this legislation. This review is outlined under the scope of the committee review section of the report. A wide range of recommendations regarding intelligence programs and their management has been included within the classified annex of this report.

## FISCAL YEAR COST PROJECTIONS

With respect to clause 2(l)(3)(B) of Rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this legislation does not provide new budget authority or tax expenditures. The committee has attempted pursuant to clause 7(a)(l) of Rule XIII of the Rules of the House of Representatives to ascertain the outlays which will occur in fiscal year 1986 and the 5 years following if these amounts are appropriated. These estimates are contained in the classified annex and are in accordance with those of the executive branch.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to clause 2(l)(3)(C) of Rule XI of the House of Representatives, the committee has received no report from the Congressional Budget Office.

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## RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

With respect to clause 2(l)(3)(D) of Rule XI of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to the subject of this bill.

## INFLATION IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the House of Representatives, the committee has attempted to determine the inflationary impact of the bill.

The committee finds no adequate method to identify the inflationary impact of the present legislation. Further, the bill does not provide specific budget authority but rather authorizations for appropriation. Hence, any inflationary impact would depend on the amounts actually appropriated and the strain that short supplies of materials, production capacity or other economic resources would place on industrial capacity.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## NATIONAL SECURITY ACT OF 1947

* * * * * * *

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TITLE V--ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

Section 501. Congressional Oversight

* * * * * * *

*Section 502. Notice to Congress of Certain Expenditures and Certain Transfers of Defense Articles.*

* * * * * * *

*Section 502. Notice to Congress of Certain Expenditures and Certain Transfers of Defense Articles.*

*(a)(1) Funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if--*

*(A) those funds were specifically authorized by the Congress for use for such activity; or*

*(B) in the case of funds from the Reserve for Contingencies of th Central Intelligence Agency and consistent with the provisions of Section 501 of this Act concerning any significant anticipated*

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*intelligence activity, the Director of Central Intelligence has notified the appropriate congressional committees of the intent to make such funds available for such activity; or*

*(C) in the case of funds specifically authorized by the Congress for a different activity--*

*(i) the activity to be funded is a higher priority intelligence or intelligence-related activity;*

*(ii) the need for funds for such activity is based on unforeseen requirements; and*

*(iii) the Director of Central Intelligence or the Secretary of Defense has notified the appropriate congressional committees of the intent to make such funds available for such activity.*

*(2) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.*

*(b)(1) The transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of Section 501 of this Act.*

*(2) Paragraph (1) does not apply if--*

*(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or*

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*(B) the transfer--*

*(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and*

*(ii) is not being made in conjunction with an intelligence or intelligence-related activity.*

*(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.*

*(c) As used in this section--*

*(1) the term 'intelligence agency' means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;*

*(2) the term 'appropriate congressional committees' means the intelligence committees and the Committee on Appropriations of each House;*

*(3) the term 'intelligence committees' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate;*

*(4) the term 'specifically authorized by the Congress' means that--*

*(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for*

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*that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or*

*(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity;*

*(5) the terms 'defense articles' and 'defense services' mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);*

*(6) the term 'transfer' means--*

*(A) in the case of defense articles, the transfer of possession of those articles, and*

*(B) in the case of defense services, the provision of those services; and*

*(7) the term 'value' means--*

*(A) in the case of defense articles, the greater of--*

*(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or*

*(ii) the replacement cost; and*

*(B) in the case of defense services, the full cost to the Government of providing the services.*

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MINORITY VIEWS OF REPRESENTATIVES

STUMP, IRELAND, HYDE, CHENEY, LIVINGSTON AND McEWEN

We resolutely oppose the absolute prohibition on material assistance to the Nicaraguan democratic resistance contained in Section 105 of H.R. 2419. As the situation in Nicaragua grows ever more grave, a majority of the Committee acknowledges its dismay at the internally repressive and externally subversive conduct of the Sandinista regime governing Nicaragua, but refuses to vote for effective legislation which will help to stop that conduct. We urge the House to reject Section 105 of H.R. 2419 and to support aid to the Nicaraguan democratic resistance. Therein lies the opportunity to achieve a just, lasting, and verifiable peace in Central America.

## SUMMARY

The President's program for Central America of democratic freedom, economic development, stable security and a negotiated settlement deserves the support of the American people and their representatives in the Congress. The President set forth in his April 1985 peace plan, in unmistakably clear terms, the Nicaraguan contribution required for a just, lasting and verifiable peace in the region:

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— Nicaragua's implementation of its commitment to democracy made to the Organization of American States.

— An end to Nicaragua's aggression against its neighbors.

— Removal from Nicaragua of the thousands of Soviet bloc, Cuban, PLO, Libyan and other military and security personnel.

— A return of the Nicaraguan military to a level of parity with their neighbors.

To achieve our policy objectives in Central America, the United States must support the Nicaraguan democratic resistance. Both the principles for which the United States stands and the security interests of the United States and its allies require such support. Without such support, the Sandinistas will be free to consolidate and to expand the Marxist-Leninist order they have imposed on Nicaragua. The repressive and subversive actions of the Sandinistas since they took power in 1979 shows their intentions clearly. United States support for the Nicaraguan democratic resistance is essential to ensure the security of our allies in the region and to maintain a chance for democracy and freedom in Nicaragua.

The Intelligence Committee thwarts this essential effort by adopting the language in Section 105 of H.R. 2419 prohibiting material aid to the armed resistance. In the Committee markup of the bill, we offered an

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amendment to provide $28,000,000 in military-related aid to the resistance in fiscal year 1986. The Committee defeated the amendment by a vote of 6 ayes to 10 nays, divided precisely along party lines. Thereafter, we offered an amendment to provide $28,000,000 in strictly humanitarian aid to the resistance. The Committee defeated the amendment by a vote of 7 ayes to 9 nays. We then offered an amendment which provided no money for aid, but struck the prohibition on aid from the bill. The Committee defeated this amendment by a vote of 6 ayes and 10 nays, again divided along party lines. Finally, the Committee adopted the prohibition on material assistance to the resistance — which is unsatisfactory since it does not provide the support needed for the resistance, but which is more reasonable than the Democrats' previous blanket prohibition — by a vote of 9 ayes to 7 nays.

We offered a full range of options for U.S. policy with respect to the resistance which would encourage the Sandinistas to cease internal repression and begin national reconciliation, and would enhance the security of our allies in the region. Nevertheless, the Committee's majority prefers to continue the congressionally-imposed abandonment of the resistance, leaving the Sandinistas free to consolidate the first Marxist-Leninist foothold on the mainland of the Americas. The Committee majority's tragic policy protects the Sandinistas from the Nicaraguan people and sets the stage for Communist expansion in this hemisphere in the coming years. Although the Committee's majority surely does not intend it to be so, theirs is a prescription in the long-term for destabilization of Central America and an eventual war in which American participation will be difficult to avoid.

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The Committee majority's prohibition on material aid to the Nicaraguan democratic resistance is an unreasonably rigid encumbrance on the President's authority to conduct foreign policy. Moreover, the prohibition could well leave the President with no choice in emergency circumstances but to use the United States armed forces.

Assistance to the Nicaraguan democratic resistance is fully consistent with the principles for which the United States stands and with international law. Such assistance is essential to serve American security interests and to ensure the safety of our allies in the region. The roadblocks the Congress has placed in the way of aid to the resistance should be removed and the United States should renew its support to the Nicaraguan democratic resistance.

The Democrats' leadership apparently believes in the "Little Bo-Peep" theory of dealing with states which stray into the fold of Communism. That theory holds that if you leave them alone, perhaps they will come home, wagging their peace-loving tails behind them. While the Democrats wait for the Sandinistas to come home to democracy, the Sandinistas trample the political and human rights of the Nicaraguan people and spread subversion in neighboring countries.

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## I. THE PRINCIPLES FOR WHICH AMERICA STANDS SUPPORT THE NICARAGUAN DEMOCRATIC RESISTANCE

The citizens of the United States of America expect the foreign policy of their government to support the cause of freedom and to safeguard the security of the United States and its allies. The United States must continue to support the forces of freedom and oppose the forces of tyranny and repression. The Nicaraguan democratic resistance fights for the right of every Nicaraguan to have a free voice in the governance of that nation, and the resistance deserves American support.

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American foreign policy in Nicaragua must stem from the first principles upon which our great Republic was founded. In 1776 we held, and in 1985 we still "hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." It is as true for the Nicaraguan people today as it was for the American people in 1776 that, "when a long Train of Abuses and Usurpations. . . evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security." However distant and quaint these words of the Declaration of Independence may seem to some in the Nation's Capital today, we believe that they retain their vital force and should continue to guide us.

The Nicaraguan people know no freedom, and the long train of Sandinista abuses and usurpations evince most starkly a design to reduce the Nicaraguan people under absolute despotism. The leaders of the Sandinista regime have made clear their intentions. On August 25, 1981, Humberto Ortega, the current Sandinista Defense Minister, said in an address to Nicaraguan military specialists that "Marxism-Leninism is the scientific doctrine that guides our revolution." In May 1984 Bayardo Arce, a member of the Sandinista party's nine-member Directorate and Coordinator of its Policy Committee, addressed leaders of the Moscow-line Nicaraguan Socialist Party (PSN) on the basic goals of the Sandinista leadership. The speech was not originally intended for publication, but an unauthorized tape recording was made and the Spanish

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newspaper La Vanguardia printed a verbatim account. Only then did the Sandinistas' Comandante Daniel Ortega claim publicly -- and falsely -- that Arce's presentation did not represent official Sandinista policy.

Arce affirmed that "Sandinism is . . . Marxism." He referred to the leaders of the two parties as "we Communists," and the Sandinista and PSN parties as "a single force." He predicted that eventually they would "drop the fiction of a Marxist-Leninist Socialist Party on the one side and those of the Sandinista Front on the other" and "gradually form a single party." He explained that for the present, however, "we have not declared ourselves Marxist-Leninists publicly and officially," because "our strategic allies tell us not to declare ourselves Marxist-Leninist, not to declare socialism." To do so would jeopardize the prospects of further Western economic aid to Nicaragua -- a paradox Arce described as "the first experience of building socialism with capitalist dollars."

Arce conceded that the Sandinistas had promised the Organization of American States in 1979 to guarantee "nonalignment abroad, a mixed economy, and political pluralism" for reasons of expediency. The promise was designed to keep "the international community" from supporting a U.S. proposal that might have kept the Sandinistas from victory in July 1979. He noted that the Sandinistas had to endure the "nuisance" of elections and other "bourgeois formalities" impeding the "dictatorship of the proletariat." In a similar vein, in a June 1984 interview with a Soviet press agent, Comandante Ortega, now the President of Nicaragua, stressed that "we" were holding elections to

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"go beyond the notions of traditional bourgeois democracy" and "to consolidate the revolutionary government."

According to Arce in his May 1984 speech to the PSN, once the elections were past, however, "we" could proceed with drafting a "new constitution" which "will allow . . . for the construction of socialism in Nicaragua." That socialism would be radical in domestic and foreign policies: "agrarian reform . . . confiscations, nationalization of the banks and foreign trade . . . the Soviet-Cuban military advisers, the internationalism of the revolution . . . are the facts of the revolution and everything we have done has that dynamic behind it." Underscoring the Sandinistas' determination to support like-minded revolutionaries elsewhere and remain allied with the Soviets and Cubans, Arce said that "imperialism asks . . . us to abandon interventionism, to abandon our strategic ties to the Soviet Union and the socialist community." But the Sandinistas "cannot" do either "unless we cease being revolutionaries."

The outlines of the Marxist-Leninist program to create a totalitarian state in Nicaragua have become clear. The people of Nicaragua cannot speak as they choose, buy food as they choose, or live where they choose. Among other things, the Sandinistas arrest and imprison political opposition leaders who dare to speak the truth, they control the food supply through block political control organs, and they force people from their homes to create free-fire zones to attack the armed resistance.

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Just one month ago, four of us, Messrs. Stump, Hyde, Cheney and Livingston, sat with La Prensa editor Jaime Chamorro in a small room in the aging building in Managua housing the newspaper's offices. La Prensa tries to print the truth, but cannot do so when the truth does not suit the objectives of the Sandinista regime. For every edition of his paper, Mr. Chamorro must trudge off to the Sandinistas' office of censorship to seek their seal of approval. What they do not like, he cannot print, on pain of imprisonment. This is the Nicaragua of the Sandinistas today.

The Sandinistas' Nicaragua of tomorrow will resemble even more the Marxist-Leninist state of which Bayardo Arce spoke, if we do nothing. If the United States fails to support the Nicaraguan democratic resistance, the Sandinistas will eventually eliminate their opposition, either by military defeat or by exile. With no opposition, the Sandinistas will consolidate their control of the Nicaraguan people, and Ortega's Nicaragua will complete its metamorphosis into Castro's Cuba.

## II. THE SECURITY INTERESTS OF THE UNITED STATES AND ITS ALLIES SUPPORT THE NICARAGUAN DEMOCRATIC RESISTANCE

The United States must maintain its security, and the security of its allies. The Sandinista regime constitutes the principle threat to peace in the Central American region because of its alliance with Soviet-bloc nations,

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its unwarranted substantial military buildup, and its efforts to subvert the governments of neighboring nations in Central America.

The Soviet-Cuban-Nicaraguan axis bisecting the Western Hemisphere poses a long-term strategic threat to the security interests of the United States. About two-thirds of America's foreign trade and petroleum passes through the Panama Canal and the Caribbean Sea. In the event of Soviet military efforts to attack or destabilize Western Europe, at least half of the supplies needed to defend the Allied Nations would transit the Caribbean Sea. Further expansion in the Caribbean region of Soviet air and naval power, and the air and naval power of Soviet proxy states, would constitute a clear threat to the security of the United States and its allies. New ports and bases in Nicaragua would materially enhance Soviet capabilities. The security interests of the United States do not begin and end on the land borders of the United States.

The United States has an additional security interest in modification of Sandinista behavior due to the increasing numbers of refugees fleeing repression. If the United States does not aid the resistance and the situation deteriorates in Nicaragua, the United States will face the need for a long-term, massive commitment to refugee aid for hundreds of thousands of Central Americans fleeing Communism, as they fled it in Cuba, Southeast Asia, and Afghanistan.

Those who state that Nicaragua constitutes no direct threat to the United

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States have a shortsighted view of the situation. Of course, the United States faces no current, direct threat of a conventional attack on the United States, and, although it is less certain, U.S. allies probably will not face conventional Nicaraguan attack in the immediate future. The United States is, of course, fully able to meet the threat of conventional attack on the U.S. or its allies. However, like the Cubans before them, under Soviet tutelage the Nicaraguans have become specialists in the art of subversion through low-intensity conflicts. The Nicaraguans have mastered lies, deception and clandestine paramilitary support techniques so essential to Marxist-Leninist "wars of national liberation," which history shows to be truly wars of national enslavement under the Communist whip. This concern has given way to gallows humor circulating in some quarters in Central America reflected in the remark that the only major blessing of Guatemala is its lack of a land border shared with Nicaragua. Borders have, of course, served poorly to deter the Sandinistas' efforts to spread Communist subversion to neighboring countries.

In contrast to the long-term threat the Sandinistas represent for the United States, our allies in Central America face a more direct and immediate threat from the Sandinistas' offensive military buildup and support for subversion in neighboring countries. Since the Sandinistas made their now-abandoned promises to the Organization of American States in July 1979 to devote their efforts to peace and justice, the Sandinistas have engaged in the largest offensive military buildup in Central American history.

When the Sandinistas took power in 1979, they had 6,000 soldiers; today

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the Sandinistas' forces encompass 64,000 soldiers, counting only active duty military and mobilized reserves. Then the Nicaraguan Army had 3 tanks; today it has 150 tanks. Then the Nicaraguan Army had 31 other armored vehicles; today it has 200. Then the Nicaraguan military had 8 helicopters; today it has 25, including a number of Soviet Mi-24 Hind helicopters, the world's fastest, best-armed attack helicopter. Then the Nicaraguan army had no missile launchers; today it has 300. The numbers speak for themselves.

It should be noted that the Sandinistas' military buildup commenced immediately upon their accession to power in 1979, at a time when the United States was providing $118 million in economic assistance to Nicaragua. Almost three years later, before the United States had begun its support for military activities by the Nicaraguan democratic resistance, the Sandinistas had already increased the size of their army from 6,000 to 39,000, a six-fold increase. Thus, the Sandinista military buildup was not, as some have claimed, merely a response to the pressure created by the Nicaraguan democratic resistance operations conducted with United States aid. The Sandinistas' buildup was already well underway when the United States was providing economic assistance to the Sandinistas in the hope that they would fulfill their promises made in 1979 to the OAS.

Just one month ago, one of us, Mr. Stump, inspected the newly-built Sandinista military airfield at Punta Huete, outside Managua. The Punta Huete main runway extends 3000 meters in length (approximately 1.8 miles) by 45 meters (approximately 150 feet). The thickness of the runway exceeds one foot

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of reinforced concrete. The airport has a number of protective structures, called revetments, with jet-blast deflectors, which are designed for jet fighter aircraft. The design of the airport does not match the aircraft inventory of the Nicaraguan military; it matches the aircraft inventory of the Soviet military. The airport runways have the capability to handle, among other things, Soviet long-range Bear reconnaissance aircraft which, flying from Nicaragua, could surveil the critical U.S. defense, intelligence and space facilities along the west coast of the United States.

The physical evidence alone at the airport demonstrates the Sandinistas' intention at some point to acquire jet fighter aircraft for the base at Punta Huete. Furthermore, the senior military escort officers accompanying Mr. Stump, when questioned, responded that when President Ortega decides to obtain high performance jet aircraft, the Nicaraguan Air Force will be ready to use them.

Since January 1, 1981, the Sandinistas have devoted the equivalent of $520,000,000 to their military buildup. From 1980 to 1984, Communist-bloc countries and Libya provided over $500,000,000 in military deliveries to Nicaragua, with almost half of that occurring in 1984 alone. The massive Sandinista military buildup far exceeds the defensive needs of Nicaragua. This offensive buildup threatens the security of Nicaragua's neighbors in the region: Costa Rica, Honduras, El Salvador, and Guatemala. The military forces of these friends of the United States of America have not matched the Sandinista offensive military buildup.

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The Nicaraguan democratic resistance to a significant extent ties down the Sandinista military forces inside Nicaragua. Thus, the Nicaraguan resistance is the first line of defense for El Salvador, Honduras, Costa Rica, and Guatemala. If the Sandinistas succeed in destroying their opposition, or if the opposition withers on the vine for lack of resources, the Sandinistas will consolidate their internal control and look outward with the mighty military force they have created.

## III. THE UNITED STATES HAS ENGAGED IN SUBSTANTIAL DIPLOMATIC EFFORTS TO ACHIEVE A NEGOTIATED SETTLEMENT

The United States initially adopted a favorable attitude toward the Sandinistas both before and after they assumed power in Nicaragua. Along with other member states of the Organization of American States, the U.S. in June 1979 called for installation in Nicaragua of a democratic government involving representatives of all anti-Somoza groups. The following month, the Sandinista-led opposition to Somoza assumed power, and the U.S. immediately commenced aid. The Carter Administration adopted a policy of "friendly cooperation" which would include "effective and timely assistance." It argued that the Nicaraguan revolution should be judged by its actions and that the change in government was due to loss of confidence in Somoza, rather than to Cuban-Soviet intervention. Operating on these assumptions, within three months the U.S. had provided $24.6 million in emergency relief and recovery aid.

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In April, 1980, the Sandinistas packed the Council of State with their supporters by enlarging the membership from 33 to 47, thus occasioning the resignation of Alfonso Robelo (a current Nicaraguan democratic opposition leader) from government. Despite this and other signs that Sandinistas would move to consolidate their undemocratic rule, the U.S. continued to provide aid.

Apparently, the Carter Administration believed that this would establish the good faith of the U.S. and aid the Nicaraguan private sector, thus encouraging a democratic society and the abandonment of Sandinista revolutionary ambitions. Despite intelligence reports indicating Nicaraguan support for Salvadoran guerrillas, in September 1980, President Carter certified to the Congress that Nicaragua was not supporting violence or terrorism in Central America, thus meeting legal prerequisites established by the Congress for U.S. aid to Nicaragua under the Foreign Assistance Act.

In November 1980, the circumstances deteriorated rapidly. Sandinista security forces murdered Jorge Salazar, occasioning the temporary withdrawal of some business and political groups from the Nicaraguan Council of State. After several months of review and a slowdown in aid disbursements, President Carter announced the suspension of aid in January 1981, just before leaving office, and warned that assistance might not be resumed unless the Sandinistas were more forthcoming. It should be noted that by January, 1981, direct U.S.

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assistance to the Sandinistas totaled $118 million -- an average of $40 million per year, which is triple the average of $13 million per year given to the Somoza regime during the previous 17 years. The U.S. also had encouraged multilateral lending institutions to provide an additional $262 million.

In its early months in office, the Reagan Administration carefully studied available intelligence before committing itself to a Nicaragua policy. Only after reviewing well-documented evidence of Nicaraguan assistance to the Salvadoran insurgency did it, in April 1981, reverse President Carter's September 1980 judgment and determine that the Sandinistas were providing political and logistical support to the Salvadoran guerrillas. This determination had the effect of continuing indefinitely the Carter Administration's suspension of aid to the Nicaraguan government.

The U.S. nonetheless continued to attempt to persuade the Sandinistas to change their policies so that bilateral relations could be improved. With relations steadily deteriorating, Assistant Secretary of State Thomas Enders visited Nicaragua in August 1981 to inform the Sandinistas of the willingness of the U.S. to resume assistance if certain conditions were met. In particular, the U.S. sought cessation of Nicaraguan aid to the Salvadoran guerrillas engaged in subverting the Salvadoran government, but the U.S. also discussed its desire that Nicaragua halt its unwarranted military buildup and guarantee political pluralism in Nicaragua. The Sandinista government made no substantive response to the American overture and, after a very brief period, the Sandinistas continued their support for the Salvadoran insurgency.

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There were other attempts, bilateral and multilateral, to encourage negotiations during 1982, all of which the Sandinistas refused to address or adopt. On March 23, 1982, Honduras presented a six-point regional peace plan calling, among other things, for a halt to arms trafficking and mutual pledges of non-intervention. Nicaragua made no substantive response. In April 1982, U.S. Ambassador Anthony Quainton delivered to the Sandinistas an eight-point proposal to reduce tensions, which included a joint pledge of non-interference and called for an end to Nicaraguan support for insurgencies. The Nicaraguans responded but did not address the U.S. plan. In October 1982 the U.S. and seven Latin democracies issued the Declaration of San Jose calling for internal reconciliation and democracy as requirements for regional peace. Nicaragua refused to discuss the suggested conditions.

At the outset of 1983, the Foreign Ministers of Colombia, Mexico, Panama and Venezuela launched the Contadora peace process in an attempt to facilitate negotiations and regional settlement among five Central American countries. In April 1983, President Reagan announced the appointment of a Special Envoy for Central America whose primary focus would be facilitating internal dialogue and settlement within Nicaragua and El Salvador. Late that month, the Contadora countries sponsored a meeting of the five Central American countries, but Nicaragua refused to participate in the proposed multilateral negotiations. By September, the Contadora nations persuaded the five Central American countries to join with them in signing a 21-point "Document of Objectives," three of which deal with the centrality of democracy and internal

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reconciliation to the resolution of regional conflict.

In the meantime, the Nicaraguan opposition also had been attempting to talk with the Sandinista government. These attempts, some more public than others, all failed to draw the Sandinistas to the negotiating table. In December 1983, the opposition Democratic Coordinator ("Coordinadora") issued a nine-point communique calling for dialogue leading to open elections. Two months later, in February 1984, the Nicaraguan Democratic Force (FDN), the primary armed resistance group, offered a ceasefire in exchange for participation in free and fair elections and even offered to allow President Ortega to retain office pending balloting. The Sandinistas, however, refused negotiations with the armed resistance and refused to allow their full and fair participation in the elections of Autumn, 1984. The Sandinistas have refused the entreaties of the Catholic Church in Nicaragua to negotiate directly with the opposition, despite the Coordinadora's acceptance of a church-mediated dialogue and an additional offer by the Nicaraguan Episcopal Conference to adopt a mediating role. In contrast with the Sandinista refusal to carry out open elections or to talk to the opposition, El Salvador, during the three-year period between March 1982 and March 1985, carried out four free elections and undertook direct negotiations with the Salvadoran armed insurgency, consistent with the urgings of the Contadora countries.

The Contadora countries have persisted in their efforts to facilitate settlement. In January, 1984, all the countries involved agreed to "Norms of Implementation" to secure the 21 goals in the 1983 Contadora "Document of

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Objectives." However, these are the only two documents which have been endorsed by all Contadora member states. When the Central American countries were unable to reach a consensus in the Spring of 1984, the Contadora foreign ministers integrated previous work with some suggestions of their own and presented a draft to the Central American countries in June 1984. This was redrafted at the end of the Summer of 1984, and Nicaragua announced in September of 1984 its willingness to agree to the second draft. Although Guatemala said it looked favorably on this draft, the other Central American states submitted proposed modifications. These provided that no commitments would enter into force prior to ratification by all five Central American countries, that military exercises be regulated rather than prohibited, and that the Commission on Verification and Control be provided with a budget and international inspectors. The subsequent negotiation of agreements on permissible military forces would be simplified, and the interim freeze on arms acquisitions would be shortened to 60 days. These changes were suggested because the three countries considered the basic document, largely shaped by consultations between Mexico and Nicaragua, to be overly favorable to Nicaragua and particularly weak on verification procedures, a judgment with which the U.S. concurred. The parties have as yet been unable to agree on a final draft.

The U.S. has from its inception supported the Contadora process and has periodically engaged in bilateral diplomacy to bolster its prospects and maintain contact with Nicaraguan leaders. During the Contadora deliberations last summer Mexico, on behalf of the Contadora group, requested that the U.S.

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undertake bilateral talks with Nicaragua. Secretary Shultz visited Managua on June 1, 1984, to launch the process. Eventually there were nine rounds of talks, most of them two days each in length, in December 1984, taking place in Manzanillo, Mexico. The process concluded and it was agreed that the content of the talks would be confidential. Ultimately the U.S. decided not to participate in further talks in this forum because, although discussions were meant to facilitate the Contadora process, Nicaragua was neglecting Contadora in favor of the bilateral discussions and was also using the Manzanillo talks for propaganda purposes. The U.S. said it would be ready to resume these discussions if Nicaragua was serious about negotiating within Contadora.

In October 1984 Special Envoy Schlaudeman and Assistant Secretary Motley met with President Ortega in New York during a U.N. General Assembly session. Secretary Shultz also met with President Ortega in March 1985. At that meeting President Ortega urged the U.S. to resume the Manzanillo talks, and the U.S. reiterated that it would do so only if the Nicaraguans negotiated seriously within the Contadora process. The Vice President also spoke briefly with President Ortega at a reception celebrating the presidential inauguration in Brazil during 1985. In all these encounters, the U.S. has seen little sign of Nicaraguan willingness to deal in good faith with U.S. concerns.

With the congressionally-mandated cessation of aid to the contras last year, the U.S. removed the pressure on the Sandinistas to engage in meaningful negotiations. The United States can anticipate even greater Nicaraguan

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obduracy in the future than we have experienced in the past three and a half years, if Congress continues to prohibit effective aid to the Nicaraguan democratic resistance.

## IV. INTERNATIONAL LAW SUPPORTS AID TO THE NICARAGUAN DEMOCRATIC RESISTANCE

The principles of international law support U.S. efforts to assist the Nicaraguan democratic resistance. Professor John Norton Moore of the University of Virginia is a leading commentator and analyst in the field of international law today, and serves as Chairman of the American Bar Association Standing Committee on Law and National Security. In an address to the White House Central America Outreach Group on February 22, 1985, Professor Moore analyzed the international law issues in the Central American debate. His analysis appears below in full.

* * *

### Introduction

"The United States historically has been a leader in seeking to promote world-order and adherence to law. These are traditional American values that are embodied in United Nations and OAS Charters. It is, thus appropriate and important that our actions in Central America and elsewhere be measured against these standards. In doing so I will look first at the factual

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context, then turn to a legal analysis of that context, and finally, I will briefly examine a number of persistent misconceptions about the facts and the law in Central America.

The Factual Context

"After careful review of the evidence, both the Bipartisan Kissinger Commission and the House Select Committee on Intelligence concluded that Nicaragua and Cuba are thoroughly involved in efforts to overthrow neighboring governments in Central America — particularly in El Salvador. These efforts include:

"--meetings held in December 1979 and May 1980 in Cuba to forge a unified Salvadoran insurgency under Cuban and Nicaraguan influence;

"--financing of the insurgency and provision of the preponderance of its weapons and supplies; training of insurgent leaders in bases in Nicaragua; and

"--support for overall insurgent command and control from bases established near Managua, and supply, technical and political assistance.

"The resulting FMLN insurgency is neither temporary nor small time. It fields an army about one-fifth the size of the regular Salvadoran armed forces. To give one example of the seriousness with which it is supported, it

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operates some 67 offices in 35 countries in support of the continuing attack.

"Cuba and Nicaragua have no fund cut-off legislation terminating assistance to the FMLN nor do they have a Boland Amendment ruling out as an objective the overthrow of the democratically-elected Duarte government of El Salvador. Indeed, their objective is clearly the overthrow of the government of El Salvador and its replacement by a totalitarian model.

"Unlike the early days of the Vietnam War where there was great uncertainty about the facts surrounding covert North Vietnamese action, we are fortunate today to have separate independent congressional findings of the facts of Cuban and Nicaraguan involvement in the armed attack on El Salvador. To give one example, Congress as a whole found in the Intelligence Authorization Act of 1984: By providing military support, including arms, training, logistical command and control and communications facilities to groups seeking to overthrow the goverment of El Salvador and other Central American Governments the Government . . . of Nicaragua has violated Article 18 of the Charter of the Organization of American States . . . .

Analyses of the Law

"These Cuban-Nicaraguan activities violate:

Article 2(4) of the UN Charter
Article 3, 18, and 20 of the revised OAS Charter;

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Article 1 of the hemispheric Rio Defense Treaty;

Articles 1, 2, 3 and 5 of the UN Definition of Aggression;

The unanimously adopted 1965 General Assembly Declaration on Inadmissibility of Intervention;

The 1970 General Assembly "Friendly Relations" Declaration;

Principle 5 of the Helsinki Accords;

The 1972 United States-Soviet 'principles agreement', and

Even Articles 1, 2 and 6 of the Soviet Draft Definition of Aggression.

"This pattern of ongoing aggression constitutes an armed attack justifying the use of force in collective defense under Article 51 of the UN Charter and Article 3 of the Rio Treaty. Indeed, Article 27 of the OAS Charter declares that such an attack is 'an act of aggression against * * * [all] the American States,' and Article 3 of the Rio Treaty creates a legal obligation to assist in meeting the armed attack.

"The legal obligation under Article 3 is parallel to that under Article 5 of the NATO Treaty in the event of an armed attack against a NATO member and under Article 5 of the Security Treaty with Japan in the event of an armed attack against Japan. Article 3 of the Rio Treaty provides:

"The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent

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right of individual or collective self-defense by Article 51 of the Charter of the United Nations.

"Each of the Contracting Parties may determine the immediate measures which it may individually take in fulfillment of the obligation contained in the preceding proposals.

"The United States response pursuant to this obligation -- in support of world order and self-determination -- may be overt, covert or both, as has been the case in virtually every conflict in which America has fought in this century. No one has ever urged that in response to Nazi aggression in World War II the allies could not provide assistance to partisan forces or undertake covert operations in Germany. Assistance to the contras, whether overt or covert, is a lawful option for the United States in meeting the continuing Cuban-Nicaraguan armed attack.

Persistent Misperceptions

"Finally, let me turn to two factual and five legal misperceptions concerning the conflict in Central America.

"Some have assumed that the Sandinista military build-up and hostility to its neighbors is a response to contra activities. Nothing could be more clearly in error as a matter of the public record. That record shows:

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"--The United States cut off military assistance to the Somoza regime during the key phase of the revolution and was a co-sponsor of the OAS Resolution against Somoza;

"--President Carter invited Daniel Ortega and other Sandinista leaders to the White House in an effort to have good relations with Nicaragua;

"--The U.S. offered Peace Corps assistance -- which was rejected in favor of an immediate and massive Cuban and Soviet-bloc presence;

"--The U.S. supplied medical assistance to the new regime;

"--The U.S. gave $118 million in economic assistance to the new regime in its first 2 years -- more than was given to the Somoza regime in the previous 20 years;

"--The United States supported $292 million in World Bank and Inter-American Development Bank Assistance for the new Sandinista Government;

"--About a billion dollars in aid collectively came from the Western democracies; and

"--The Kissinger Commission found that the United States 'undertook a patient and concerned effort to build a constructive relationship of mutual trust with the new government.'

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"Some have assumed that the record does not support arms shipment from Nicaragua sufficient to make out an armed attack.

"But:

"—We know of the 1980 FMLN trip in search of weapons to the USSR, East Germany, Bulgaria, Ethiopia and Vietnam and the massive commitments for arms as a result of that trip;

"—Weapons serial number assessment and defector reports both establish that the preponderance of weapons are trans-shipped from Soviet bloc source;

"--The government of El Salvador regularly captures more arms and ammunition from the FMLN than it loses to it; and

"—The Department of State has repreatedly detailed weapons intercepts in reports of February 1981, March 1982, May 1983 and July 1984; and

"—Most importantly, this single factor focus on weapons supply ignores all other indicators of instigation, financing, training, command and control, and political and technical support. The intensity of those activities, taken together, is clearly an armed attack.

"In the contemporary Charter era the predominant armed attack is less

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armies on the march than a covert attack centered on terrorism or assistance to insurgents. Such attacks are particularly dangerous in that they seek to create ambiguity about the attack while focusing public attention on the defensive response.

"Some have urged that a defensive response against El Salvador violates Articles 18 and 20 -- the strong non-intervention Articles of the OAS Charter. But these critics ignore Article 22 of the OAS Charter that clearly provides: 'Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 18 and 20.'

"Thus a response to collective defense pursuant to Article 3 of the Rio Treaty is patently not a violation of Article 18 and 20. Moreover, Articles 21, 27, 28 and 137 of the OAS Charter support this same point that actions in defense under the Rio Treaty do not violate the non-intervention articles of the OAS Charter.

"Some have asked whether United States assistance to contras is not 'state terrorism' or exactly what we condemn when undertaken by Cuba and Nicaragua against El Salvador, but to make such a charge is to undermine the most important distinction in the United Nations and OAS Charters -- that between aggression and defense. Nicaraguan actions and United States reactions are no more equivalent than Nazi aggression and Allied response. Indeed, one of the great dangers of covert attack as a threat to world order is its ability to

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confuse attack and defensive response -- particularly when the covert attack is waged by a closed totalitarian society and accompanied by a squid-like cloud of disinformation and the defense is undertaken by an open democratic society which inevitably fully debates every facet of its policy.

"Some have urged that international law requires that a defensive response be overt -- strangely, simultaneously others have urged that law requires that any response to be covert.

"Neither position is correct. International law requires that existence of a response to an armed attack be reported to the United Nations and that a response be proportional. But it does not dictate whether such response be overt or covert or both. In this case the United States had repeatedly raised the issues before the United Nations and it is difficult to imagine that a policy of support for insurgents in Nicaragua is somehow a non-proportional response to a policy of Nicaraguan support for insurgents in El Salvador.

"We should be clear on this point. The United States is free to fashion a defensive response against the armed attack on El Salvador that may be overt, covert or both. My own preference is for a policy I would call quasi-covert in which we clearly and openly acknowledge we are making a response to the armed attack from Nicaragua but decline to specify precisely the modalities of response -- as has been our policy in every conflict in which we have fought. Such a policy I believe carries less risk of escalation and more opportunity for the Contadora process than a policy in which we insist on detailing all

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elements of assistance to the contras or even of openly acknowledging the contra policy.

"Some have urged that United States withdrawal from the Nicaragua case before the ICJ demonstrates a lack of merit in the United States legal case.

"But the decision of the United States to withdraw was not based on the merits of the legal case but rather on the conviction that the ICJ had violated the Statute of the Court in asserting jurisdiction where it had none. That is, the assertion of jurisdiction where the Court had none was an abuse of power voiding any legal compulsion to go forward.

"It was also influenced by the reality that only two permanent members of the Security Council and only 5 out of 16 judges on the Court come from nations that had accepted the compulsory jurisdiction of the Court and that Nicaragua sought to use the case in aid of its disinformation effort to inhibit a United States defensive response to its armed attack.

"And it was influenced by a realistic awareness that the Court had no mechanism for fact appraisal in an ongoing covert armed attack and defensive response.

"Finally, some have asserted that a contra policy is only consistent with a United States declaration of war against Nicaragua.

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"But, a declaration of war is not only not required for a lawful defensive response under international law, some scholars such as Judge Philip Jessup have argued such declarations are no longer appropriate after the Kellogg-Briand Pact of 1928 and the UN Charter outlawed war and permitted force only in defense. There has been no declaration of war anywhere in the World since World War II. One reason for this is the feeling that such declarations inhibit peaceful settlement.

"And there is no such regulation under national law. The War Powers Act itself is clear on this, that no declaration of war is required in the current Central American setting.

"Let us be clear: in the face of the Cuban-Nicaraguan armed attack, there are no national or international legal constraints on Congress supporting assistance to the contras, whether overt or covert or even on reexamining the Boland Amendment. No declaration of war or other formality is required. Indeed, such a declaration is almost certainly undesirable as a matter of conflict management and support for the Contadora process.

"World order and self-determination are at stake in Central America. President Monroe stated in the Monroe Doctrine and Congress affirmed in the 1962 Cuban and 1965 Western Hemisphere resolutions that the United States would not accept efforts to forcefully deprive nations in this hemisphere of their right to self-determination. Cuba and Nicaragua are engaged in a serious and sustained attack against El Salvador and other neighboring states

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for precisely that purpose. Congress must agonize about the appropriate American response to the attacks in Central America, but it should make no mistake in understanding that self-determination and world order are on the side of an effective response."

* * *

Professor Moore's analysis makes clear that the United States has acted in a manner fully consistent with international law and that renewed U.S. aid to the resistance would be fully consistent with it also.

## V. CONGRESS HAS PLACED A SERIES OF ROADBLOCKS IN THE WAY OF THE NICARAGUAN RESISTANCE

Since December 21, 1982 some form of restriction in United States law has constrained the United States in supporting the Nicaraguan democratic resistance. While the United States hobbled the resistance, the Sandinistas' military buildup and support for external subversion continued apace. To help to reverse the Sandinistas' repressive course, the United States must reverse its trend toward ever more restrictive laws hampering the resistance.

The Congress first enacted a prohibition on assistance to the Nicaraguan democratic resistance in late 1982, in the form of the so-called "Boland Amendment." The Boland Amendment was adopted as Section 793 of the Department

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of Defense Appropriation Act, 1983 incorporated in the Continuing Appropriations Resolution for Fiscal Year 1983 (P.L. 97-377). The Boland Amendment prohibited CIA, DOD and other intelligence entities from using funds provided by the DOD Appropriation Act, 1983 "to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras." The period of applicability of the Boland Amendment was extended by operation of the Preamble and Section 101(c) of the Continuing Appropriations Resolution for Fiscal Year 1984 (P.L. 98-107) and by the Preamble and Section 101(a) of the Further Continuing Appropriations Resolution for Fiscal Year 1984 (P.L. 98-151), including retroactively to the funding hiatus between November 10 and November 14, 1983. The Boland Amendment was in effect from December 31, 1982 to December 8, 1983.

Next, the Congress imposed a cap on aid to the resistance of $24 million for FY 1984. The $24 million cap provision was adopted as Section 775 of the Department of Defense Appropriation Act, 1984 (P.L. 98-212) and, in identical form, as Section 108 of the Intelligence Authorization Act for Fiscal Year 1984 (P.L. 98-215). The $24 million cap provision stated that, during fiscal year 1984, not more than $24,000,000 of the funds available to the CIA, DOD, and other intelligence entities could be obligated or expended "for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual." The $24 milion cap provision applied

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from December 8, 1983 to September 30, 1984. It should be noted, however, that any funds used in fiscal year 1984 prior to enactment of the $24 million cap provision would count against the cap.

Congress enacted a temporary complete prohibition on aid to the resistance while it tried to sort out this and other issues in the annual appropriations fiasco at the beginning of fiscal year 1985. The temporary full prohibition was adopted as Section 106(c) of the First Continuing Appropriations Resolution for Fiscal Year 1985 (P.L. 98-441). The provision prohibited the CIA, DOD and other intelligence entities from using any funds provided by the continuing resolution "for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual." The continuing resolution, and therefore the period of applicability of the temporary full prohibition, was extended three times (P.L. 98-453, P.L. 98-455, and P.L. 98-461). The temporary full prohibition applied from October 1, 1984 to October 11, 1984. It should be noted that, although the First Continuing Appropriations Resolution did not become law until October 3, 1984, its restrictions applied retroactively to funds used during the funding hiatus on October 1 and 2, 1984.

Finally, Congress enacted the complete prohibition currently applicable in fiscal year 1985, subject to a possible release of $14 million. The provision was adopted as Section 8066 of the Department of Defense Appropriation Act, 1985 as incorporated in the Further Continuing Appropriations Resolution for

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Fiscal Year 1985 (P.L. 98-473). Section 801 of the Intelligence Authorizaton Act for Fiscal Year 1985 (P.L. 98-618) also incorporated this provision by reference. The provision prohibits the CIA, DOD and other intelligence entities from using funds available to them in fiscal year 1985 "for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual." However, the provision allows otherwise prohibited use of $14,000,000 if, after February 28, 1985, the President reports to Congress that Nicaragua continues support to external insurgencies and he explains and justifies the need for assistance for paramilitary operations in Nicaragua, and the Congress approves such assistance by joint resolution. The President transmitted such a report on April 3, 1985. [See Appendix]

In response to the President's report, the Senate approved expenditure of the $14 million by a vote of 53 yeas to 46 nays on April 23, 1985. On the same day, however, the House failed to do so by a vote of 180 yeas to 248 nays. Thus, the full prohibition on military support for the resistance, which took effect on October 12, 1984, remains in effect.

The policy of the Congress since December 21, 1982 has been to hamstring and finally to prohibit completely military aid to the Nicaraguan democratic resistance. The Sandinistas did not accept this congressionally-imposed olive branch and move into good faith negotiations aimed at producing a just, lasting and verifiable peace in Nicaragua. The Sandinistas did not stop their

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military buildup after Congress acted to stabilize the size of the resistance forces by prohibiting aid needed to expand those forces. The policy of the Congress squeezed the resistance, but left the Sandinistas free to work their will.

The Democrats' most often repeated objection to a policy of aid to the resistance has been their allegation that the Administration seeks to "overthrow" the Sandinistas. Overthrow of the Sandinistas has never been the Administration's objective in fact, nor has the Administration ever stated overthrow to be its objective. The Administration has sought to encourage the Sandinistas to modify their repressive behavior and to participate in good faith in achieving a pacific settlement of outstanding issues. The Administration has not sought military victory over the Sandinistas by proxy war, but insists that the Sandinistas live up to their promises made to the OAS in 1979.

Aid to the resistance in past years, before Congress ended it, had two aims: hampering the flow of arms shipments from Nicaragua to insurgents in neighboring countries and applying pressure on the Sandinista regime to encourage it to end repression and subversion and to begin to negotiate in good faith. Had the aid continued as planned, greater progress toward pacific settlement of problems in the region probably would have occurred, as the Sandinistas would have had an incentive to negotiate instead of grandstanding for world opinion, buying time to consolidate power, and relying on the U.S. Congress to keep them safe.

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Much confusion has resulted from casual use of the word "overthrow." The Admininistration is quite candid in its assertion that it wishes to prevent Sandinista internal consolidation, because once the Sandinistas fully emplace the typical methods of totalitarian control, they can freely carry out their Marxist-Leninist domestic and foreign policy agenda at a later date. The Administration — and the Contadora nations — have thus insisted that a vital element in any settlement is allowing in Nicaragua a truly free election in which all Nicaraguans may participate on fair terms. How the Sandinistas fare in such an election will be determined by the Nicaraguan people — not by force of arms.

Thus, the Administration has placed its trust in democratic pluralism rather than in a military routing of the Sandinistas. The resistance provides essential pressure on the Sandinistas to encourage them to move towards democratic pluralism. If U.S. support for such pressure is established and maintained on a consistent basis, as it has not been in the past due to congressionally-imposed prohibitions, a just, lasting and verifiable peace may be achieved. Limited aid to the resistance would bring pressure on the Sandinistas to modify their conduct; it would not bring military victory in the form of a forcible overthrow of the Sandinistas by the resistance.

Some, however, have claimed that U.S. insistence on a move toward democracy in Nicaragua represents a "double standard," since the U.S. has not insisted on bringing about democracy in all countries, e.g. other Communist countries, and has been willing to coexist with them. The United States

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formulates its policy in a real world, not a world of academic theoreticians. Certainly the U.S. would support democracy everywhere, but the U.S. has an especially important obligation to pursue it in Nicaragua. Nicaragua is a Communist, expansionist regime on the mainland of this continent at a distance from the U.S. covered in a two-hour flight from our borders. Nicaragua threatens the security of nations allied with the United States. Moreover, the U.S. has a special obligation to correct things in Nicaragua.

The U.S. was instrumental in helping establish and initially settle the Sandinistas in power. Like other member states of the Organization of American States, the U.S. politically supported their takeover on the basis of their promises of democracy and a better life for Nicaraguans. Once they were in power, the U.S. supplied them with unprecedented funds — $118 million — and successfully urged the international community to give or lend much more. The Nicaraguan people increasingly are oppressed by totalitarian controls; the U.S. must acknowledge its part in bringing about that fate, however innocently. We have a greater obligation actively to attempt to rectify the situation than would be the case in another country cursed with a repressive regime.

When the Sandinistas first took power in 1979, the United States provided substantial economic assistance. The Sandinistas thanked us by establishing a Marxist-Leninist repressive state and engaging in an unwarranted substantial military buildup. From late 1982 to the present, Congress reduced and then prohibited U.S. aid to the Nicaraguan democratic resistance. The Sandinistas

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-- always consistent -- again thanked us by increasing their repression and armed forces. The efforts of the Congress to appease the Sandinistas by removing U.S. support for the Nicaraguan resistance have proved completely counterproductive. The time has come for the Congress to reverse course and support the Nicaraguan democratic resistance.

## VI. THE INTELLIGENCE COMMITTEE REJECTED A FULL RANGE OF OPTIONS FOR A SUCCESSFUL RESISTANCE POLICY

The Permanent Select Committee on Intelligence rejected a full range of options for a successful resistance policy at its markup of H.R. 2419. In support of the President's program, we offered the following amendment:

"Strike Section 105 and insert in lieu thereof:

"SEC. 105. There is authorized to be appropriated for fiscal year 1986 the sum of $28,000,000 to the Central Intelligence Agency for support of military or paramilitary operations in Nicaragua by the Nicaraguan democratic opposition."

The amendment would have restored the U.S. support for the Nicaraguan democratic resistance needed as an effective counterweight to Sandinista efforts to consolidate power. The signal the U.S. would send merely by reaching a domestic consensus to provide aid to the resistance, coupled with

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the aid itself, would have constituted a powerful incentive to the Sandinistas to moderate their behavior and engage in national reconciliation in good faith. The Committee rejected the amendment by a vote of 6 ayes to 10 nays, on a straight party-line vote.

We next offered the following amendment to provide humanitarian assistance to the resistance through the Department of State:

"Strike Section 105 (containing the Nicaragua prohibition) and insert in lieu thereof the following:

"SEC. 105. (a) There is hereby authorized to be appropriated to the Department of State for fiscal year 1986 the sum of $28,000,000 to be obligated and expended solely to furnish to the Nicaraguan democratic opposition food, clothing, medicine and other humanitarian assistance.

"(b) The term 'humanitarian assistance' as used in this section does not include any weapons, weapons systems, ammunition or any other equipment or material which can be used to inflict serious bodily harm or death.

"(c) At any time after October 1, 1985, if the President determines that negotiations based on the Contadora Document of Objectives of September 9, 1983 have failed to produce an agreement and that other trade and economic measures have failed to resolve the conflict in the Central American region, the President may submit a report to the Congress setting forth a detailed

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statement of the reasons for which negotiations or other measures have failed to resolve the conflict in the region and requesting a specified amount of funds for additional assistance of such a nature as he deems appropriate to the Nicaraguan democratic opposition, and such funds shall be available for such assistance upon enactment of a joint resolution described in subsection (d) of this section, notwithstanding the prohibition contained in subsection (a) of this section.

"(d) For the purpose of subsection (c) of this section, 'joint resolution' means only a joint resolution, introduced after the date on which the report of the President under subsection (c) of this section is received by the Congress, the matter after the resolving clause of which is as follows: 'That the Congress approves the use of funds described in Section 105(c) of the Intelligence Authorization Act for Fiscal Year 1986.'

"(e) The procedures applicable in the Senate and House of Representatives with respect to the report and the joint resolution to which subsection (c) of this section refers, shall be as provided in Section 8066(c)(2)-(7) of the Department of Defense Appropriations Act, 1985 (Public Law 98-473), and this subsection is enacted by the Congress in the manner and with the effect stated in Section 8066(c)(8) of that Act."

A Member of the Committee objected to consideration of the amendment as not germane to the bill. Arguing that humanitarian assistance did not meet the definition of "intelligence and intelligence-related activities" contained in

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Rule XLVIII of the Rules of the House of Representatives, and that it thus lay outside the scope of the intelligence authorization bill, that Member attempted to prevent consideration of, and a vote on, humanitarian aid to the resistance. The Chair sustained the point of order.

We then modified the humanitarian assistance amendment to make it clearly germane to the bill, by specifying that a Department of State intelligence element would administer the assistance and that delivery of the assistance would be accomplished at unannounced times and places in a clandestine fashion. The amendment provided:

"Strike Section 105 (containing the Nicaragua prohibition) and insert in lieu thereof the following:

"SEC. 105. (a) There is hereby authorized to be appropriated to the Department of State Bureau of Intelligence and Research for fiscal year 1986 the sum of $28,000,000 to be obligated and expended solely to furnish to the Nicaraguan democratic opposition food, clothing, medicine and other humanitarian assistance.

"(b) The term 'humanitarian assistance' as used in this section does not include any weapons, weapons systems, ammunition or any other equipment or material which can be used to inflict serious bodily harm or death.

"(c) At any time after October 1, 1985, if the President determines that

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negotiations based on the Contadora Document of Objectives of September 9, 1983 have failed to produce an agreement and that other trade and economic measures have failed to resolve the conflict in the Central American region, the President may submit a report to the Congress setting forth a detailed statement of the reasons for which negotiations or other measures have failed to resolve the conflict in the region and requesting a specified amount of funds for additional assistance of such a nature as he deems appropriate to the Nicaraguan democratic opposition, and such funds shall be available for such assistance upon enactment of a joint resolution described in subsection (d) of this section, notwithstanding the prohibition contained in subsection (a) of this section.

"(d) For the purpose of subsection (c) of this section, 'joint resolution' means only a joint resolution, introduced after the date on which the report of the President under subsection (c) of this section is received by the Congress, the matter after the resolving clause of which is as follows: 'That the Congress approves the use of funds described in Section 105(c) of the Intelligence Authorization Act for Fiscal Year 1986.'

"(e) The procedures applicable in the Senate and House of Representatives with respect to the report and the joint resolution to which subsection (c) of this section refers, shall be as provided in Section 8066(c)(2)-(7) of the Department of Defense Appropriations Act, 1985 (Public Law 98-473), and this subsection is enacted by the Congress in the manner and with the effect stated in Section 8066(c)(8) of that Act.

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"(f) The humanitarian assistance furnished by the Department of State Bureau of Intelligence and Research under subsection (a) of this section shall, to ensure the success of its delivery, be delivered at unannounced times and places in a clandestine manner."

The Committee rejected the amendment by a vote of 7 ayes to 9 nays.

We then offered a simple amendment to strike Section 105. Although the amendment would have provided no funds for support — humanitarian or otherwise — to the resistance, it would have permitted the President to provide such assistance from contingency funds based on a new Presidential covert action program finding, in the event circumstances deteriorate rapidly in Central America. The Committee rejected this amendment by a vote of 6 ayes to 10 nays, on a straight party-line vote.

Finally we offered as an amendment congressional findings of fact concerning Sandinista conduct based on two of the findings in the FY 1984 Intelligence Authorization Bill plus findings based on subsequently received intelligence. A Member objected to the amendment's consideration on grounds of germaneness, and the Chair sustained the point of order.

Since none of the reasonable options we offered commanded a majority of the Committee, the Committee then adopted, by a vote of 9 ayes to 7 nays, an amendment narrowing the Democrats previous blanket prohibition. The only virtue of Section 105 as reported by the Committee is that it is not as bad as the blanket prohibition upon which the Democrats have previously insisted.

The Committee's majority simply will not vote for assistance -- even if it is purely humanitarian assistance — to the Nicaraguan democratic resistance.

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Their refusal to provide any assistance may finally seal the fate of Nicaragua under totalitarian Sandinista control, unless the House rejects the Committee's position and supports aid to the resistance, as we urge.

## VII. CONCLUSION: SUPPORT THE NICARAGUAN DEMOCRATIC RESISTANCE

We have expressed our views at great length because the issue of United States policy toward the Sandinista regime and the Nicaraguan resistance will determine the course of events in Central America for generations to come. The United States faces the supreme test of its ability to advance its interests in the face of the expansion of Communism close to home. The national interest requires both that we avoid a war involving the U.S. armed forces and that we effectively resist the establishment and expansion of Communism on the mainland of the Americas. Support for the Nicaraguan democratic resistance is the wisest course.

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# APPENDIX: UNCLASSIFIED EXCERPTS FROM THE PRESIDENT'S REPORT TO THE CONGRESS OF APRIL 3, 1985

Under Section 8066 of the Department of Defense Appropriations Act, 1985, contained in the Continuing Appropriations Resolution for FY 1985 (P.L. 98-473), the President, on April 3, 1985, submitted a comprehensive Top Secret report to the Congress on the Nicaragua situation.

Despite the availability of the President's report to every Member of the House of Representatives, few Members (other than Members of the Permanent Select Committee on Intelligence) availed themselves of the opportunity to read it.

Because of the importance of the President's report to an informed understanding of United States policy in Central America, the unclassified portions of the report released by the White House on April 10, 1985, are reprinted below.

* * *

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April 10, 1985

THE WHITE HOUSE

WASHINGTON

# U.S. Support for the Democratic Resistance Movement in Nicaragua

Unclassified Excerpts from the President's Report to the Congress Pursuant to Section 8066 of the Continuing Resolution for FY-1985, PL 98-473.

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## I. U.S. Goals in Central America

United States policy toward Nicaragua must be viewed in the overall Central American context, where we have a fundamental interest in the development and preservation of stable societies able to sustain social, economic, and political change without coming under the sway of the Soviet Union or its allies. As the National Bipartisan Commission on Central America stated, "Central America is both vital and vulnerable and whatever other crises may arise to claim the nation's attention, the United States cannot afford to turn away from that threatened region." A hostile or destabilized Central America close to our border would pose an unacceptable threat to our vital interests in Mexico, the Panama Canal, and the Caribbean sea lanes.

Because of the importance of Central America and the complexity of the problems there, U.S. policy toward the region has centered on four interrelated objectives:

-- support for democracy, reform and human freedom in each country, including genuine national reconciliation, full respect for human rights, and popular participation in the political process--as demonstrated by open, fair, genuine elections;

-- renewal of economic development and growth in the region to address the root socio-economic causes of turmoil and conflict and to provide increased opportunity and better conditions of life for all segments of society;

-- security for the democratic governments of Central America, to help shield them from guerrilla warfare or externally-supported subversion as they develop more equitable, humane, and stable societies; and

-- Support for a political solution to the conflicts in Central America, via peaceful dialogue within and among the countries of the region and for a comprehensive, and verifiable regional settlement as outlined in the Contadora Document of Objectives.

These four objectives of the United States are consistent with the strongest ideals of the American nation and, we are convinced, reflect clearly the wishes of the vast majority of the people in Central America and throughout this hemisphere.

Progress has been made toward achieving these objectives in El Salvador and elsewhere in Central America. In Washington, the Administration and the Congress have demonstrated the broad consensus that now exists in the U.S. on the need for increased aid to Central America by passing major economic and security assistance legislation for fiscal years 1984 and 1985. The

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Contadora process, helped by our bilateral efforts at Manzanillo, has also made progress in some areas, despite major remaining obstacles. The basic problem of Central America remains unaltered: a dedicated Marxist-Leninist regime in Nicaragua, armed and backed forcefully by Cuba, the Soviet Union, and its allies, bent on a massive weapons acquisition program and continuing active support for armed insurrection and subversion in neighboring countries, threatens the stability of democratic governments and fundamental U.S. interests in Central America.

## II. Nicaragua's Role in Central American Conflict

(A) Sandinista objectives and strategy: Since the FSLN's rise to power in July 1979, real political power in Nicaragua has rested in the hands of the FSLN National Directorate. Composed of nine commandantes--three representatives from each of the three Sandinista factions--it determines and coordinates overall Nicaraguan objectives and strategy. The judiciary and the national assembly are fully subservient to this executive authority.

While we know there are personal differences among the nine, as well as differences on tactics, all nine commandantes are Marxist-Leninist revolutionaries committed to radical social change and the export of revolution, disdainful of democratic-capitalist regimes, and distrustful of the United States.

Having suffered from discord in the past, the FSLN takes great care to present a common front, although it has used rumors of disagreement to play on foreign interest in supporting so-called "moderate" elements. In need of Western economic support, the FSLN attempts to hide the most glaring evidence of its Marxist and dictatorial tendencies. As a result and as an outgrowth of the "tercerista" strategy that succeeded against Somoza, it follows a flexible strategy under which the private sector is permitted to exist (albeit under systematic confiscation and increasing state restrictions), a political opposition can operate in limited areas (under the tight watch of FSLN and GON control instruments) and elections are carried out (under conditions assuring FSLN control of the outcome, via control of the media, political assembly, and the basic necessities of life). It is a strategy dedicated to the long-term survival of the Sandinistas' grip on power and Marxist-Leninist ideal behind a facade of moderation.

Based on the experience of the past five years and on several key Sandinista policy statements not intended for publication (for example, the September 1979 "72 Hour Document" which set forth

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the goals of the revolution, and Commandante Bayardo Arce's May 1984 confidential speech to the Socialist Party--both of which have been acknowledged as authentic by Nicaraguan senior officials), the FSLN has the following overriding objectives:

-- the political/economic transformation of Nicaraguan society along Marxist lines, marked by redistribution of income, confiscation of private property, and an expanded state role in the economy;

-- the establishment and maintenance of complete Sandinista control within Nicaragua (demonstrated by the intimidation and restriction of the opposition; encouragement of factions challenging authentic opposition groups in labor, political parties, the press, human rights, and organized religion; the development of Sandinista "mass organizations;" and the control all government institutions by the FSLN);

-- the development of closer ties with the Soviet Bloc and Cuba (shown by the GON's redirection of trade, its voting pattern in international bodies, its acceptance of 2,500-3,500 Cuban military and 3,500-4,000 Cuban civilian advisers, and its military purchases and identification with Cuban and Soviet Bloc goals in the region); and

-- extensive material support for "fraternal revolution" in Central America (evidenced by its pattern of support for the Salvadoran guerrillas as well as similar groups in Guatemala, Honduras, and Costa Rica).

It is clear from the historical record that the Sandinistas entered office with these basic objectives described above, which have not changed during their period of power.

(B) Nicaraguan military buildup and alignment with the Soviet Bloc: As the Sandinistas took control of Managua on July 19, 1979, Somoza's National Guard disintegrated, leaving the Sandinista guerrillas as the only significant armed group in Nicaragua. With most of the Guard members captured or fleeing Nicaragua, there was little military threat to the FSLN within or without Nicaragua. Nevertheless, long before its opposition took up arms against it, the GON/FSLN had begun an impressive military buildup far beyond its defensive needs. The guerrilla army--which was renamed the Popular Sandinista Army (EPS)--grew from an estimated strength of 6,000 troops in July 1979 to about 16,625 by year's end, and to about 23,750 (army plus activated reserves and militia) by January 1982, when the armed opposition carried out its first major operations. In 1980 the GON announced a voluntary militia program, which Defense Minister Humberto Ortega boasted would eventually be 200,000 strong.

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The Sandinista military establishment now has over 62,000 men on active duty and another 57,000 reserve and militia--a total of 119,000, many by now with combat experience. In contrast, Somoza's National Guard usually numbered 6,000 to 7,000 (and peaked at about 14,000 during the 1978-79 insurrection). Of Nicaragua's immediate neighbors, Honduras' armed forces number about 18,000 and Costa Rica has no army.

The number of Cuban military and security advisers in Nicaragua grew in a similar pattern. About 200 Cuban military advisers were reported in Nicaragua in 1979, and an estimated 600 were present by the end of 1980. By the beginning of 1982, the estimate of Cuban military and security advisers in Nicaragua had risen to 1,500-2,000. In 1983 and 1984, the number of Soviet Bloc advisers increased, reaching about 2,500 to 3,500 Cuban military and security personnel and about 200 Soviet, other Bloc, Libyan, and PLO military advisers and technicians.

The growth of Soviet Bloc arms deliveries to Nicaragua lagged somewhat behind the increase in EPS troop strength and the Cuban presence, although orders were accepted as early as 1979. Soviet Bloc military deliveries totalled about $5 million in 1980, but rose to about $45 million in 1981, and to approximately $90 million during 1982.

In late 1979, East Germany agreed to supply Nicaragua with 800 military trucks (1,000 were eventually delivered). During 1980, Nicaragua also reportedly signed a secret defense agreement with Cuba. It also sent about 100 personnel for MiG pilot and mechanic training in Bulgaria, the first in a series of steps to acquire advanced fighter aircraft. In 1980 and 1981, the GON sent major missions to the Soviet Bloc to discuss military assistance. Following the August 1980 visit to Managua of Yasser Arafat, the PLO provided military instructors to the GON. In mid-1981, the GON received its first 25 Soviet T-55 medium battle tanks (it received about 25 more during 1982, and now has about 110 such tanks, along with about 30 PT-76 light amphibious assault tanks).

Following the onset of organized insurgent activity in Nicaragua in early 1982, the Sandinista military continued to grow in number of troops, quantity and quality of weapons, and in the overall level of Soviet Bloc assistance. Soviet Bloc military deliveries were about $115 million in 1983 and about $250 million in 1984. The cumulative amount from 1979 to the present reached over $500 million.

This weaponry was increasingly sophisticated. In addition to delivering more T-55 tanks, the Soviets introduced the PT-76 light amphibious tank, multiple rocket launchers, heavy artillery, helicopters (including the MI-24 Hind assault helicopter in late 1984), transport aircraft, about 200 armored vehicles, patrol boats, and radar and air defense equipment.

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Considering that there was no significant armed opposition to the Sandinistas prior to 1982, the pattern of the 1979-1982 GON military growth and its Soviet connection illustrates that the Sandinista Government was committed from its earliest days to a military system with the following facets:

-- a large active force, with large ready reserve and militia;

-- a close military relationship with Cuba and the Soviet Bloc, as well as Libya and the PLO; and

-- new offensive weapons systems that would further destabilize the then-existing regional military balance (such as the 1981 receipt of the T-55 tanks, and the GON decision in 1980 to acquire advanced fighter aircraft).

(C) Support for armed insurgency in El Salvador and activities against other Central American Governments: Nicaragua's export of revolution to El Salvador, and to a lesser degree to the rest of Central America, remains an integral part of Sandinista ideology and foreign policy. Over the past 12-14 months, a compilation of reporting provides convincing evidence that Managua continues to play a key role as a supply and communications center, training base, and headquarters for the Salvadoran guerrillas. There is enough specific evidence to be confident that the supply effort continues and remains a critical factor in maintaining the guerrillas' military capabilities.

While there has been a reduction in materiel support to the insurgency since mid-1984 compared to the sizeable influx during 1982-83, Managua has an abiding commitment to maintain the insurgency in El Salvador.

In addition to intelligence evidence, Sandinista officials, such as directorate members Tomas Borge and Bayardo Arce, explicitly acknowledged at various times in 1984, Nicaraguan support to the guerrillas both in terms of materiel and communications.

Nicaragua also continues to provide military training to the Salvadoran guerrillas. A body of reporting over the past year suggests that a few hundred Salvadoran trainees may be at Nicaraguan camps at any given time. For example, a new training camp for Salvadorans was established last year near Santa Julia on Nicaragua's Cosiguina Peninsula. New buildings, a firing range, and an obstacle course are hidden in wooded terrain. The isolated location and proximity to El Salvador make the site ideal for insurgent training and infiltration. Salvadoran

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trainees receive combat experience fighting the anti-Sandinistas prior to returning to El Salvador. The pattern of evidence is unmistakable. There is no reason to doubt that Nicaraguan support for the Salvadoran guerrillas, in equipment supply, training and in command and control operations continues to be a vital element in outside support for guerrilla activities.

Significance of Nicaraguan support to anti-government forces. External resupply and support assistance from Nicaragua will remain critical for the Salvadoran insurgents for the foreseeable future. A variety of reports over the past few months indicate that the guerrillas continue to depend heavily on Nicaragua:

-- reporting from several sources confirm that the most critical need is for ammunition; and

-- in early 1985, reporting indicated that the Salvadoran Army's increased effectiveness in small-unit tactics has resulted in "substantially fewer" arms captured by the guerrillas, forcing them to bring in more arms from abroad.

All evidence indicates that Managua will continue to provide sufficient materiel for the guerrillas to sustain at least their current level of activity.

Support for Other Central American Radicals:

Sandinista activities elsewhere in the Central American region include training and arms support for radical groups, generally in close cooperation with Cuba. This support has been key to unity efforts and attempts to upgrade the military potential of these groups;

-- Guatemala: Managua and Havana have worked jointly since 1982 to consolidate the principal rebel factions. During the past year, Managua has provided additional support to the Guatemalan guerrillas, which parallels early support fo the Salvadoran rebels;

-- Honduras: Prior to 1982, Havana and Managua discouraged armed struggle in Honduras so as not to endanger use of the country as a conduit for arms shipments to Salvadoran guerr However, as the Honduran government began to intercept arms shipments and disrupt leftist networks, the Cubans and Nicaraguans shifted their policy to more active subversion:

- in mid-1983, the Sandinistas infiltrated approximatel 100 Cuban/Nicaraguan-trained Honduran insurgents in a unsuccessful effort to set up a base for insurgent operations and made another abortive infiltration effort in mid-1984; and

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- reporting from a variety of sources indicates the training continues, both in Nicaragua and Cuba, and includes combat experience against anti-Sandinistas in northern Nicaragua;

-- Costa Rica: Nicaragua provides arms and training to the armed wing of the Costa Rican Communist Party, which is seen by the hardline faction of the party as the backbone of a potential domestic insurgency.

(D) Internal consolidation: The consolidation of Sandinista domestic power with a system of extensive internal control presents a major obstacle to Central American stability, given Sandinista objectives and the lack of democratic checks and balances to prevent or moderate an aggressive policy supporting revolution in neighboring countries. Nearly six years after it seized power, the FSLN has total control of the vast GON apparatus and has largely consolidated its power.

Since taking power, the FSLN has moved quickly to confirm its control of key government functions, and to expand significantly the government's role in national life. It should be noted that although the FSLN has allowed some opposition role, mainly to project an image of moderation for external consumption, it has steadily restricted opposition activity. Its clear goal is the institutionalization of a Marxist-Leninist one-party state in Nicaragua. Following is a checklist of Sandinista actions taken so far to achieve political domination:

-- the placing of FSLN cadre in all GON agencies and assigning key Ministries to National Directorate members;

-- the creation of a repressive state security/secret police organization controlled by the FSLN and assisted by Cuban and East German advisers;

-- major expansion of the armed forces, controlled by Sandinistas and creation of the Sandinista militia (both a source of armed strength and mobilization of the masses);

-- creation and expansion of Sandinista mass organizations, utilizing the literacy campaign and the various groups (labor, students, and the ubiquitous CDS block committees) to build cadres, extend party control, and to intimidate opposition groups;

-- expansion of Sandinista representation in the Council of State, effectively reducing the opposition to a token role in that body;

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-- postponing elections five years until the FSLN had full political control and was able to ensure favorable results;

-- active harassment of the political opposition through press censorship, denial of permits for rallies, arbitrary confiscation of property, and arbitrary price and credit policies;

-- support of rival, pro-Sandinista factions within all opposition parties, the media, organized religion, labor, and non-partisan organizations; and

-- extensive utilization of Soviet Bloc military and other cadre whose loyalty is toward consolidation of Marxist-Leninist system.

Blaming FDN activities in early 1982, the government declared a "state of emergency" that further curtailed civil liberties and restricted opposition activities. The FSLN also stepped up CDS block committee actions against political dissidents, including individuals, political parties, labor unions, the private sector, the media, and organized religion. The institution of a draft, further expansion of the Nicaraguan military and increased receipt of major amounts of Soviet Bloc weaponry greatly increased the FSLN's capability to control national life and intimidate the opposition.

Having taken advantage of its access to GON funds and resources, and of the fact that opposition forces had been weakened by years of repression under Somoza and then the Sandinistas, the FSLN announced elections for November 1984. The flawed electoral process--during which the FSLN rejected opposition requirements for minimal guarantees to allow fair participation--demonstrated that the FSLN was not prepared to risk its own political power. From the FSLN's standpoint, however, the elections gave it a basis to institutionalize its control over Nicaraguan society.

Events following the elections indicate the FSLN will use its control of the Presidency and the new National Assembly to provide the institutional framework for continued Sandinista domination. This current phase of FSLN consolidation includes continuation of political and media controls, aggressive use of the draft as a device for mobilization and social control, rejection of armed and unarmed opposition calls for Church-sponsored dialogues, and proposal of a National Assembly statute that would severely limit rights of most opposition members.

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The unfair electoral arrangements and subsequent efforts to stifle political opposition in Nicaragua were taken after the Sandinistas had announced on September 20, 1984, their willingness to accept the draft Contadora treaty which contained extensive commitments to respect political rights and ensure a democratic political system.

Sandinista Rejection of Dialogue: The Nicaraguan armed and unarmed opposition have consistently emphasized the goal of genuine democracy in Nicaragua, and have repeatedly offered to engage in dialogue with the Sandinistas. Significant armed opposition proposals were made by the Revolutionary Democratic Alliance (ARDE) on February 18, 1984, and by the Nicaraguan Democratic Force (FDN) on February 21, 1984. The unarmed opposition put forth a nine point proposal in January 1984; and refined this proposal in September 1984 to address the conditions necessary for opposition participation in the November elections. More recently, the unarmed opposition leadership in Managua issued a February 22, 1985 proposal for a national dialogue.

In a separate declaration signed in San Jose on March 1--a major opposition milestone that received wide attention--the externally-based opposition (including representatives of the FDN, the Miskito group MISURA, ARDE, and prominent democratic civilian leaders such as Arturo Cruz) proposed a national dialogue to be mediated by the Nicaraguan Catholic Church, offering to implement a mutual in situ ceasefire and accept Daniel Ortega as President until such time as the Nicaraguan people decided on the matter through a plebiscite. They also endorsed the minimum requirements established on February 22 by the internal, unarmed opposition to begin a national dialogue. In addition to the suspension of armed activities and the establishment of a ceasefire, these included the lifting of the state of emergency; absolute freedom of expression; a general amnesty and pardon for political crimes; a full restoration of constitutional guarantees and the right of habeas corpus; guarantees of the safety of members of the resistance movement who participate in the dialogue; and the implementation of these measures under the supervision of guarantor governments. The foregoing are not unreasonable demands of abdication, but rather the minimum rights of people in a democratic society.

When Arturo Cruz attempted to fly to Managua on March 7 to deliver this proposal to the Nicaraguan Government, the Government prevented his return, and refused to respond to either opposition proposal. On March 22, the Nicaraguan Catholic Church hierarchy(Episcopal Conference) issued a communique reiterating its support for a national dialogue and declaring its willingness to act as a mediator.

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III. Efforts to Resolve Central American Conflict

(A) U.S. objectives toward Nicaragua: United States policy toward Nicaragua since the Sandinistas' ascent to power has consistently sought to achieve changes in Nicaraguan government policy and behavior. We have not sought to overthrow the Nicaraguan government nor to force on Nicaragua a specific system of government. The changes we seek, listed below, are essential if Central America is to achieve peace and stability:

-- termination of all forms of Nicaraguan support for insurgencies or subversion in neighboring countries;

-- reduction of Nicaragua's expanded military/security apparatus to restore military balance in the region;

-- severance of Nicaragua's military and security ties to the Soviet Bloc and Cuba and the return to those countries of their military and security advisers now in Nicaragua; and

-- implementation of Sandinista commitment to the Organization of American States to political pluralism, human rights, free elections, non-alignment, and a mixed economy.

These goals are supported by all of Nicaragua's neighbors, they are consistent with the original goals of the anti-Somoza coalition and Sandinista pledges to the OAS, and they are contained in the September 1983 Contadora Document of Objectives, which Nicaragua signed together with the other Central American states. The last of the above objectives has been stressed by both the Carter and Reagan Administrations. It is directly related to both the internal situation in Nicaragua and Nicaraguan's relations with its neighbors, especially unarmed, neutral, and democratic Costa Rica, which sees the realization of this objective as a guarantee of its own security.

(B) Bilateral and regional diplomacy 1979-1982: United States negotiations with the Sandinistas began before they arrived in power July 19, 1979. Our efforts to strengthen the moderate opposition to Somoza succeeded in obtaining from the Sandinistas their July 12, 1979 letter to the OAS and their Basic Statute, in which they made the commitments to democracy, human rights, and non-alignment cited above.

During 1979 and 1980, the Carter Administration made a major effort to achieve good relations with the Nicaraguan Government. Total authorized bilateral assistance reached $117.2 million, and the U.S. strongly supported Nicaragua in multilateral aid institutions. Our central objective was to encourage evolution

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of a democratic system in Nicaragua. Diplomatic contacts were frequent and at a high level, including Secretary Vance in Quito in August 1979, a Carter/Ortega meeting in September 1979, a U.S. visit by Commandantes Wheelock and Tirado in December 1979, Assistant Secretary Bowdler's visit to Managua in January 1980, and ARA Deputy Assistant Secretary Cheek's visit in September 1980. As late as October 1980, still seeking constructive relations, the Carter Administration certified that Nicaragua was not assisting international terrorism.

But by December 1980, the intelligence revealed that the Sandinist were supporting the Salvadoran guerrillas, that 600 Cuban military advisers were in Nicaragua and that pilots had been sent abroad for MiG training. The military buildup had begun and internal repression was apparent in the stacking of the Council of State in May and the murder of private sector leader Jorge Salazar in November. Disbursements of AID and PL-480 sales were suspended and military assistance to El Salvador resumed. Economic assistance was formally ended by a Presidential Determination April 14, 1981, that Nicaragua was assisting Salvadoran guerrillas.

This Administration, nevertheless, made two major attempts to reverse the deteriorating relations in 1981-82. Assistant Secretary Enders visited Managua in August 1981, and presented an offer, including renewed economic assistance, for an end to Sandinista support for guerrillas and reduced levels of Nicaragua's military capability and foreign advisors. The GON never responded to our offer. Nicaraguan Ambassador to the U.S. Arturo Cruz resigned shortly thereafter in frustration over these developments. In April 1982, we made an eight-point proposal reiterating the August terms and emphasizing international verification of arms limitations and reaffirmation of Nicaragua's earlier commitments to support pluralism, free elections, and a mixed economy. A series of exchanges became increasingly sterile and concluded in August 1982. We then joined a multilateral effort of eight democracies of the region in October 1982--the San Jose Declaration--which outlined the essential conditions for restoring peace. These governments designated Costa Rican Foreign Minister Volio to carry the declaration to Managua. The Nicaraguan Government, however, refused to receive him or enter into dialogue on the San Jose principles.

(C) Contadora and Manzanillo 1983-1985: Colombia, Panama, Mexico, and Venezuela began in January 1983, at Contadora, Panama, to mediate a regional settlement. Meetings among the five Central American and these four "Contadora Group" governments led to agreement in September 1983 on a Document of Objectives. This identified twenty-one political, security, and social-economic goals whose verifiable implementation would meet our concerns. We have consistently supported efforts to develop the Document of Objectives into a comprehensive and verifiable agreement.

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By April 1984, the Contadora Group had developed recommendations for implementing the Document of Objectives and proposed a draft agreement in June 1984. This first draft was accepted as a basis for further discussions by the Central American states. The Sandinistas made it clear that they would not accept any element to which they had not previously agreed. The other Central Americans made suggestions for its improvement and called for direct negotiations with Nicaragua.

The Contadora group presented a second draft on September 7. Nicaragua's insistence on prohibition of military maneuvers was accepted; timing of security commitments of interest to Nicaragua was tied to signature; but commitments on foreign advisers and arms reductions were left for later negotiation. Verification was extremely weak.

Nicaragua conditionally accepted the draft on September 21. The other Central Americans, however, had strong misgivings. Honduras, El Salvador, and Costa Rica developed a series of proposed amendments that were presented to the Contadora group on October 20, 1984. Informal discussions within Contadora since last fall have focused on reconciling these two drafts of a "final agreement." When the Contadora process resumes April 11-12, these drafts--and efforts to strengthen verification--will be the focus of discussion.

Manzanillo discussions: During a June 1, 1984 visit to Managua, Secretary Shultz proposed direct discussions between Nicaragua and the U.S. We made clear from the outset that this process was designed to facilitate the Contadora negotiations and contribute to the goal of a comprehensive, regional settlement.

U.S. Special Envoy Ambassador Harry Shlaudeman held nine meetings with the Nicaraguans between June and December 1984, all but one in Manzanillo, Mexico. We made specific proposals for a comprehensive step-by-step solution to the problems identified by both sides. But Nicaragua used the talks as a vehicle to try to resolve its most immediate bilateral security concerns without addressing such Contadora objectives as regional arms reductions, or reincorporation of its insurgents into civil society under democratic conditions. Following Nicaragua's conditioned acceptance of the September 7 Contadora draft agreement, the United States attempted to initiate concrete discussions on the points still at issue in the draft. The Nicaraguan delegation was unwilling to consider this approach, seeking instead to "explore" security issues only outside the Contadora context.

Nicaraguan diplomacy throughout the six years of Sandinista rule has thus been characterized by an effort to bilateralize negotiations, making a comprehensive settlement impossible. It

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has at the same time engaged in grandstand diplomacy by making public statements inconsistent with its real negotiating position and by appeals to the U.S. public and to various international fora in search of propaganda advantage.

In sum, it is apparent that the Sandinistas use the negotiating process to advance their more serious objectives:

-- buy time for internal consolidation;

-- ease external political, economic, and military pressures by presenting the appearance of reasonableness and flexibility; and

-- obtain explicit or implicit guarantees against U.S. unilateral military intervention and preclude neighboring countries from supporting Nicaraguan democratic opposition.

By the same token, it is clear that, despite lip service to the democratization aspects of Contadora, the Sandinistas are unalterably opposed to any internal changes that would jeopardize their control of political life in Nicaragua.

IV. Policy Alternative and U.S. National Interests

The foregoing sets forth in detail our objectives regarding Nicaragua and the enormous obstacles to realizing them posed by Sandinista ideology, geo-strategic aims, and intransigence. We have considered the possible alternative approaches to achieving our policy objectives for regional stability. In doing so, we have ruled out courses of action that would amount to acceptance of Sandinista goals and abandonment of our own objectives, and direct application of U.S. military force.

We are left with reliance upon an array of policy instruments, short of direct U.S. military action, to advance our objectives and deny the attainment of those of the Sandinistas and their Communist mentors. In the broadest terms, we have two options:

-- first, we can seek through effective pressure to modify Sandinista behavior while we help strengthen the political, economic and military capabilities of the countries directly threatened; or

-- second, we can forego pressure and concentrate on seeking to contain the effects of Sandinista behavior through assistance to neighboring countries.

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The second of these options, containment, would seek to counter the expansionist activities of the Soviet Union, Cuba and Nicaragua in Central America by, inter alia, a major buildup of the security capabilities of the countries directly threatened.

It would mean providing Honduras advanced combat aircraft, anti-tank and anti-air defense sytems and underwriting a military force increase from about 18,000 to perhaps 35,000. In the case of El Salvador, it would mean more resources and major drives to slow the guerrillas before the Sandinista pipeline picks up again. Costa Rica would have to decide whether to develop new security capabilities (it now has no army) and host U.S. exercises or other measures.

To assure that these countries would have the will to resist in an environment of increasing Nicaraguan military dominance, the U.S. would probably have to offer firm guarantees for resisting Nicaraguan attack, including Nicaraguan aggression through unconventional warfare.

U.S. military and naval exercises probably would increase. The intelligence services of each country would have to be expanded. Additional economic assistance (a doubling of 1984/85 levels or more) would be needed to offset the impact of Soviet/Cuban subversion and political action. We have not attempted to cost-out this option, but total assistance to the area could rise from the $1.2 billion per annum level of FY 84/85 to $4-5 billion per year for the immediate future.

In terms of full realization of our objectives toward Nicaragua, the containment approach is obviously deficient in that it is passive and does not contemplate changes in Sandinista behavior. We do not see such changes occurring under this scenario even if the steps outlined above are coupled with economic sanctions and other measures to isolate Nicaragua. Moreover, there are fundamental obstacles to implementing this strategy in a way that will achieve its defensive goals. First is the question of whether Congress would support the long-term increases in U.S. material assistance that would be necessary. A half-hearted "containment" response, or one that lasted for only a year or two would only serve to prolong the Central American conflict without altering its ultimate outcome. Second, we must face the fact that definitive removal of U.S. support from the anti-Sandinistas will have, in its own right and apart from any compensatory measures, a demoralizing effect on our friends in the region. This, in turn, will tend to make them more susceptible to Sandinista intimidation and/or negotiation initiatives, and less confident in future security relationships with us.

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The flaws in the containment approach, especially measured against the long-term commitment of the Sandinistas and the assurances of political and military support they enjoy from the Soviet Bloc, would appear to dictate eventual success of Sandinista-inspired insurgency throughout the region.

Our conclusion is that continuation of strong pressure on the Sandinistas is the only effective course of action that will safeguard our security and those of our friends. Under this strategy, we foresee the following:

-- resumption of aid to the Nicaraguan armed resistance at levels sufficient to create real pressure on the Government of Nicaragua;

-- U.S. economic and security assistance to other countries of Central America;

-- continued U.S. insistance on strengthening democratic institutions, respect for human rights and reforms;

-- additional military and naval exercises; and

-- active encouragement of a negotiated political solution to regional problems based on our four objectives and the 21 point Contadora Document of Objectives.

The justification for our proposed approach--the strategy of strong pressures combined with a negotiating channel to encourage a political solution--is treated in Section V below, in terms of specific objectives such as halting Nicaraguan support for the Salvadoran guerrillas and encouraging the removal of Cuban and Soviet advisors. Of the various approaches, this has the highest chance of achieving a negotiated solution. It requires far less U.S. resources than a containment policy and a better chance of being effective. The resources are now in place but should the armed opposition be dismantled or break apart, it could not be put back together again without enormous effort, if at all. In effect, this option would be lost--placing us in an "accommodationist-or-military response" dilemma at some later date, when the threat to U.S. interests becomes more obvious and when the only effective response would be on a larger scale, or in less favorable circumstances.

V. Presidential Determination

(A) Description of Proposed Program: Assistance provided to the Nicaraguan democratic opposition forces will be structured so as to increase their size and effectiveness to the point where

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their pressure convinces the Sandinista leadership that it has no alternative to pursuing a course of moderation, to include:

-- cessation of support to insurgent movements in other countries;

-- reduction in their armed forces;

-- withdrawal of foreign advisers; and

-- acceptance of the March 1 Peace Proposal and establishment of a legitimately pluralistic democratic political structure which will assure that Nicaragua will not continue activities threatening to their neighbors.

The United States has a clear, undeniable moral imperative not to abandon those brave men and women in their fight to establish democracy and respect for human rights in Nicaragua. It is a traditional imperative stemming from more than 200 years during which, time and again, we have lent our support--moral and otherwise--to those around the world struggling for freedom and independence.

It is not simply a matter of the $14 million before the Congress that is the issue. The greater issue is one of the United States trying to help people who have had a Communist tyranny imposed on them by force, deception and fraud. We cannot consign the Nicaraguan people to a Communist dictatorship with no possibility--if history is any guide--of realizing the freedoms of democratic goals set forth in their San Jose unity declaration. Our responsibility is clear: we must give them our full bipartisan support.

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BOB STUMP

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